The Second Part of the Peoples {Antient / and Just} Liberties ASSERTED

In the Proceedings againſt, and

TRYALS

OF

Tho. Rudyard, Francis Moor, Rich. Mew, Rich. Mayfeild, Rich. Knowlman, Gilbert Hutton, Fob Boulton, Rich. Thornton, Charles Baniſter, John Boulton, and *William Bayly.*

At the Seſſions begun and held at the *Old-Bailey* in *London* the laſt day of the 6th Moneth, and there continued till the 7th day of the 7th Moneth next following, in the year 1670. againſt the Arbitrary procedure of that Court, and Juſtices there.

Wherein their Oppreſſion and Injuſtice are manifeſted; Their Wickedneſs and Corruption detected; and the Jury-Mans Duty laid open.

Pſa. 11. 5. *The Lord tryeth the Righteous; but the Wicked and him that loveth Violence the Lord hateth.*

Prov. 13. 23. *There is that deſtroyeth for want of Judgment.*

Iſa. 59. 14. *Judgment is turned away backwards, and Juſtice ſtandeth afar off, &c.—He that departeth from evil maketh himſelf a Prey.*

Printed in the Year, 1670.

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The Preface to the READER.

THat State which would preſerve it ſelf from Ruine and Deſtruction is ever to keep its Inhabitants pure and clean from Vice and Debauchery, and their Laws from violation and corruption, as the firſt is a way or means to engage a conſcientious obedience and obſervation of the juſt and upright Law of God; ſo the ſecond by reaſon of their due execution are the Sinews or Sanctures that bind the Inhabitants of ſuch State in a perpetual Bond of Safety and Tranquility; and its certainly true where either of theſe are violated or neglected, the ruin of that State is near at hand. There's no better way to incline the Subjects of any State to Morality and Vertue, then that thoſe that ſit at the Helme, or have the Government thereof, ſhould hold forth clear Examples and Patterns of Piety and Juſtice in their Lives and Actions; Regis ad exemplum totus componitur orbis, *ſaith the Poet*, The whole World immitate the Example of their King. *And as the Divine Hiſtorian* Joſephus *obſerves in his Eccleſiaſtical Hiſtory, Fol.* 209. But *(ſaith he)* mortal men moſt uſually are corrupted by the untoward Flatteries of wavering fortune, as appeareth by King *Reoboam*, ſeeing his Kingdom thus increaſed, he bent himſelf to all unjuſt and impious Actions, and contemned the Service of God; the People alſo conformed themſelves to his Impieties; for the Life of the Subjects is oftentimes perverted by reaſon of the corrupt and diſſolute Life of their Princes; and thoſe that are Inferiours beholding the Riot of their Superiours, will eaſily be withdrawn from all Modeſty, and follow thoſe Vices they profeſs, as if they had been their profeſſed Vertues: For ſhould they do the contrary, they ſhould ſeem to diſanul and miſlike the Actions of their Princes——The Subjects addicted themſelves to Impiety, and all Errors; for they would not make profeſſion of honeſty, for fear they ſhould ſeem to ſtuddy the means to be offenſive unto the King. *From this lively Patern, or Repreſentative of our*

2 *Chron.* 13. 18, 19, 20.

preſent

present Times, or State, we must wish that Princes in this Age would consider, and put in practice that Golden Rule of Demosthenes, Bene gubernare, recte judicare, juste facere; *to Govern well, judge rightly, and do justly, so should their Kingdoms flourish, and they themselves be in high estimation in the eyes of their People.*

W. H's Epistle in his Translation of Myrror of Justice.

And next the Princes curious eye over his own personal actions, a due heed care and regard is to be had to his Representatives in his Courts of Justice; viz. *those Justices whom he constitutes by his Commission (to hear and determine betwixt him and his People) that they be such who by their due Administration and faithfull dispensing of the Laws, Justice and Right may be done to all men without respect of Persons.*

But as Vice and Debauchery have devoured and eaten up the Nations practice of Religion, scarce leaving us the outside Shell of profession; so hath the corruption of our Laws, and the violation thereof turned back those wholsome Streams of Justice which should naturally flow from the use of them.

And that thou (Reader) *may'st see that thy self art one, who is in danger of being buried in the ruines of Religion and Piety, as well as thy Civil Rights and Liberties; which are the two Basis, or Foundations on which thy temporary here, and future well-being hereafter consists and stands. Cast thy Eye upon the Magistrates of the City of* London (*anciently stiled* Caput regni & legum) *in their Court of Judicature at the* Old-Bailey, *and behold on the one hand Vertue termed Vice, Sobriety Debauchery, Religion Faction, Pious and Peaceable Assemblies Riots and Routs, and punished as such; On the other hand, the Ancient Written Laws denied, and their not written ones the Courts Authority: Justice turned into Gaul, Right and Equity by Wit and Power over-ruled; so that its now become a Proverb,* Tell me thy Judge, and I'll tell thee thy Law.

Quod non lego non credo *Auguſt.*

Said the learned Cook, Qui non libere veritatem pronunciat proditor veritas est; *He who conceals Truth is a betrayer thereof. Therefore for the sake of Truth, and the* Readers *benefit were these Proceedings made publick, and according to that due Observation and impartial Account, which could be taken and collected of the manner of that Benches Arraigning and Condemning as well Religion, Piety, Vertue*

Vertue and Sobriety, of Right, Equity, Liberty and Property, with due Comments upon their procedures from the Ancient and Fundamental Laws of this Land, are laid to thy view.

And had not the Mayor *and* Recorder, *with the reſt of the Bench, prohibited many, by ſevere threats, from writing down the Courts partial Dealings both towards the Priſoners and Jurors; and alſo by violence took away what others had adventured to collect (commanding ſome to their Bale-dock) in all probability this enſuing Piece might have been much more enlarged to thy ſatisfaction.*

But what has been faithfully Collected and Obſerved, and whereof there were ſome hundreds of Witneſſes, is preſented to the World, the Author (deſiring rather to ſpare their Injuſtice then wrong their Judicature) has contracted this Relation to what comes within the limits of his own knowledge and undeniable proofs; but impartially laid Judgment to the Line, and diſcovered that which may tend to the good of his Country men, in the Vindication of the Laws, Truth, Innocency Equity, and Juſtice.

The

THE Laws of *England*, by Juſt and upright Miniſters and Officers, faithfully diſpenced, and impartially adminiſtred, have ever been the Upholders and Preſervers of Right and Liberty, The high eſteemed & pretious Jewels of its freeborn Inhabitants: but when unlimited Prerogatives have ſpung up, like Muſhromes out of the ſappy Apprehenſions, aſpiring Brains, and heady Humors of inferior Officers and Miniſters; Then Tyranny and Oppreſſion have under diſguiſe of Juſtice and colour of Law, deprived the Commonalty of theſe things, which they have held moſt pretious and dear to them.

The pretended Crimes or Offences laid to the charge of *Thomas Rudyard*, are far different in their kind and nature from thoſe other Perſons, who have undergone with him the ſevere Judgments, or as ſome call them, the Inquiſitory like Cenſures of that Court, which were ſo far from *Juris Dicta*, The Law of Right or impartial diſpencing of Juſtice, that they are clear contrary and directly oppoſit unto them: The Juſtices of that Court, Judge *Cook*, that famous *Engliſh* Lawyer, doth well deſcribe in his 2d Inſt. Fol. 55. in a Poetical Simile of an unjuſt Judge.

Groſius hic rodamanthus habet duriſſima Regna
caſtigatq; auditq; dolas, ſubigitq; fateri.

And in another place.

Leges fixit præcio atq; refixit.

They Puniſh, then Hear, compel to Confeſs, make and marr Laws at pleaſure.

The Occaſion of *T. R*'s being Envyed and Proſecuted by theſe Adverſaries of Peace, was becauſe of his faithful defending, and Conſtant appearing (when called thereto) for his Clyents and Retainders, in ſuch Matters & Cauſes as Will and Power had forged, and daily did put in execution againſt them; ſo that the 3d of the 4th Moneth, called *June*, the Magiſtrates of the City of *London*, in the Name or Colour of a Lievtenancy or Militia, Iſſued out a Warrant, to break open his houſe in the dead of the Night,

Night, to apprehend him (when they might have had him at Noon-day, upon the Exchange, about his occasions) and did take and carry away him, and also what Arms they there could find; which Warrant was executed by the Souldiers of one Captain *Holford*, and the next day was sent to the Goal of *New-Gate*, as a person suspected and disaffected to the Peace of the Kingdom, as was alledged in his Mittimus, under the Hands and Seals of *Samuel Starling* Mayor, *Wil. Peak*, *Rob. Hauson*, *A. King*, *J. Dawes*, *John Cutler*, *William Rouswel*, *A. Stanyon*, *John Tivell*, *Wil. Allott*, *J. Sheldon*, and *T. Davice*.

The 7th of the 4th Moneth, the Lievtenancy (so called) ordered *T. R.* to be again brought before them, who without alledging any Crime, or certain Matter that was proved against him, though earnestly requested by him, That he might hear his Accusation or see his Accusers face to face; did demand 2000 l. security for his Good-behaviour, which unreasonable Demand being not complied withal, *T. R.* was remanded to Goal, with a Mittimus under *Sam. Starling* and *John Robinsons* Hand and Seal, Pretending therein, *That* T. R. *did stir up persons to the disobedience of Laws, and abetted and encouraged such as met in unlawful and Seditious Conventicles, contrary to the late Act, in the 22th* C. 2. *of which things they alledged, that they found cause to suspect* T. R. *to be guilty.*

Which Case being brought before the Iustices of the Court of *Common-Pleas* at *Westminster*, by *Habeas Corpus*: That Court, after solemn debate, *Trinit.* 22. C. 2. gave their Judgment, *That* T. R. *was unjustly Imprisoned, and unlawfully Detained.* And so by them was set at Liberty.

His Adversary, *viz. S. Starling* the Mayor, being incensed at his Deliverance and Discharge, finds out new Stratagems to encompass his ends upon him; so that at a Sessions of the Peace, at the Old-Baily, the 29th of the 4th Moneth, an Indictment is framed and preferred against *T. R.* the Tenor whereof was, *That whereas at a Sessions of the Peace held at* Guildhall *for the City of* London, *the* 30th *of* May *the* 22th *year of the King, before* S. Starling, *&c. and other Justices of the Peace of the said City, assigned, &c. a certain Bill of Indictment was exhibited and preferred against one* Samuel Allingbridge, *late of* London, Stationer,

written

written in Parchment, for ſpeaking theſe ſeditious and menacing Words, viz. The firſt man that ſhall diſturb Mr. Vincent *will never go out of the houſe alive; & whereas one* N. Grove & J. Tillot *were ſworn to give Evidence (in behalf of the King) to the grand Inqueſt, that* T.R. *intending to hinder and pervert Juſtice and due courſe of Law againſt* S. A. *for ſpeaking the ſeditious and menacing words aforeſaid: the* 30th *of* May, *with Force and Arms, &c. the ſaid Bill of Indictment, before it came to the grand Inqueſt, unlawfully, ſecretly, and ſubtilly, did get, take, and had in his hands, and unlawfully did conceal and detain from the Jury, in contempt of the King and his Laws, to the hindrance of Juſtice and due courſe of Law againſt* Allingbridge, *unto the evil example of others, and againſt the Kings Peace, Crown and Dignity.*

To which Indictment *T. R.* appearing in Court and pleading not guilty, *John Lee* told the Bench that there was no cauſe for that *Indictment*, by reaſon that *S. A.* was tryed, convicted, and acquitted, the ſame Seſſions that the pretended Indictment miſcarryed: Whereupon the *Mayor* pulling an *Affidavit* out of his Pocket, that bore date the 29th then inſtant, alledged, That the Indictment was not drawn to the Caſe, and according to the Inſtructions that he gave to *Jo. Lee*, and ſhewed that *Affidavit* to —— *Archer*, one of the Juſtices of the *Common-Pleas*, who when he had perufed and read it over, acquainted the *Mayor*, That the matter therein contained *was no cauſe for an Indictment*: To which the *Mayor* anſwered, That it is cauſe, and ſhall be cauſe, and he would ſtand to it, withal affirming, *That he had asked chief Juſtice* Keeling's *Judgment*, and he adviſed him to proſecute it: So the Inſtructions were delivered to *John Lee* to draw up another Indictment.

This piece of practice was in open Court, which manifeſts their partiallity and unequal dealings to ſuch whom they convened before them, to receive Juſtice at their hands: And how little they (who ſate there as Judges) regarded their Oaths, and the duty of that place of ſo great a truſt, is eaſily reſolved, weighing them in the Ballance of Law and Juſtice, Said the learned *Cook* in his 3 Inſt. fol. 29. *The Judges ought not to deliver their Opinion before-hand upon a Caſe put, and proofs urged on one ſide in abſence of the party accuſed;* "For "how (ſaith he) can they be indifferent who have de-

1 *Hen.* 7. Fol. 27.

" delivered their Opinions before hand, without hearing of the " party accuſed, when a ſmall addition or ſubtraction may alter " the Caſe? And how doth it ſtand with their Oaths, that are " ſworn, That they ſhal well & lawfully ſerve our Lord the King, " and his people in the Office of a Juſtice? And they ſhould do E- " qual Law, & execution of Right to all his Subjects. Yea he ſaith further, " That the Kings Council ſhall not ſo much as put the caſe " in abſence of the Priſoner, to the Judges. As may be ſeen at large in 3 Inſt. fol. 30. And the 3d Statute of 18 *Edward* 3. In the Judges Oath its ſaid, " And that ye give no advice nor coun- " ſel to no man great nor ſmall, in no caſe where the King is " party.

Now if the *Mayors* proſecution and Juſtice *Keelings* Advice, be according to the Law, Juſtice, their Oaths and Duty, in their reſpective places, let the World judge.

The Clark of the Peace drew up another Indictment, by the Mayors Directions, which contained the ſubſtance of the for- " mer, and further, " That the ſaid *T. R.* the ſaid 30th of *May*, " comming to the aforeſaid *Nicholas Grove*, ſaid to him, That " the Bill againſt *S. A.* was loſt, and that *N. S.* ſhould attend " next *Saturday*; and that *T. R.* unlawfully and craftily did ſay " to *N. G.* theſe words viz. I will come to you ſome time this " Week, and we will go and drink a pint of Wine with Mr. " *Tanner*, and contrive to draw up a ſlight Bill, that may not be " found, and ſo make an end of the buſineſs: In contempt of the King and his Laws, to the hindrance of Juſtice, and per- " verting of due courſe of Law againſt *S. A.* for his Offence; " to the evil example of others, and againſt the Peace of the " ſaid King his Crown and Dignity.

To this Indictment alſo *T. R.* pleaded, Not guilty, and gave ſecurity by Recognizence to try them both the next Seſſions.

This Proſecution falling ſhort ſtill of the Mayor's purpoſe, which was, To clap *T. R.* up in a Goal, demands of him to give ſecurity, or at leaſt, his own Recognizance for his *Good-behaviour*; being the ſame thing that the Judges lately had given their Opinion againſt.

Therefore he refuſed that piece of Bondage, (yet offering the Court (in caſe of health) to appear once every day at the Mayors

houſe, there to anſwer any matter that ſhould be juſtly charged againſt him.) Whereupon he was committed to Priſon, and by the Mayors ſpecial Order and Direction kept cloſe Priſoner in *Newgate*.

During the time of this unequal Proſecution of *T. R.* many others felt the weight of the Mayors injuſtice, & were made Witneſſes of the various *Stratagems* uſed and practized by him and his Brethren, upon ſeveral Citizens of *London*; and likewiſe upon ſeveral other innocent peaceable men.

Upon the 19th of the 4th Moneth, *Francis Moor*, *Richard Mew*, *Richard Mayfeild*, *Richard knowlman*, and *Gilbert Hutton*, with divers others of their Friends; being (as at other times) met together (to wait upon, and worſhip the living God in Spirit and in Truth) at *Whitehart-Court* in *Grace-Church-Street*, *London*, (being forceably kept out of their own houſe by Watch-men, and Conſtables) after they had there peaceably continued together, about the ſpace of one hour, the two Sheriffs of *London*, with their Guard of Officers and Souldiers, came in and made a Proclamation by one of their Servants, That all perſons there preſent ſhould depart; which being not regarded by thoſe who peaceably came there, to give to God the things that were God's; they continued in peaceable manner together without diſtraction, not fearing what mans violence could do unto them, knowing that againſt the Innocent there was no Law: Yet the Sheriffs ſingled out of the Aſſembly the above ſaid Perſons (and delivering them into the cuſtody of one *Whiting* Beadle to the *Bridge-ward* (who was a perſon very diligent in ſuch ſervices) and his Watchmen, who carryed them by the Sheriffs order to *Biſhopſgate-Goal*; a place, who ever has had the Experience thereof, can witneſs its filthy noiſomneſs; and a horrid ſhame it is, that the Magiſtrates of this City ſhould make no better proviſion, then to incarcerate peaceable men, and their Fellow-Creatures, in places as it were on purpoſe to ſtifle or poiſon them, that they might be incapacitated to make a due defence, againſt *their intollerable* and *arbitrary Oppreſſion*.

The day following they were called before the Lievetenancy, or Council of War, at *Guildhall*, who wanting Proof and Witneſs

Witneſs of ſome hoſtile Action, done by them, they were remanded back to Priſon.

The 21th of the 4th Moneth, They being brought before the Mayor, and the Officers ſwearing that they ſaw them in *White-hart-Court* in *Grace-Church-Street*, though peaceable and quiet, (as the Sheriffs being then preſent acknowledged) yet becauſe the Sheriffs of *London* had taken up, and apprehended them, as perſons preſent after their Proclamation made, as may appear by their commitment. The Mayor made their Mittimus to *Newgate* as Rioters, the Tennor whereof was thus.

Lond. ſſ. *Receive into your cuſtody the Bodies of* Francis Moor, Rich. Mew, &c. *Herewith ſent you, being apprehended and brought before me, and charged to have made, and to have been preſent on the laſt Lords-day at an unlawful Aſſembly, Riot and Rout in* Whitehart-yard *in* Grace-church-Street London; *and for want of ſureties for their Good-behaviour, and perſonal appearance at the next Seſſions of Goal-delivery, to be held for the ſaid City and Liberties; and them ſafly keep in your cuſtody, until they ſhall be thence legally diſcharged. and this ſhall be your Warrant, dated the 21th of* June, 1670. Samuel Starling, *Mayor, To the Keepers of his Majeſties Goal of* New-Gate. (Where they were kept till the Seſſions following, with ſeveral others of their Friends, which were ſent to them as like *Offenders*.

The Court ordered theſe, with *Richard Thornton*, *Charles Baniſter*, *Job Boulton*, *Ezekiel Archer*, *Margery Fann*, and *Samuel Slaughter*, whom the Sheriffs had taken up from their Meeting in *Boſhopſgate-ſtreet*, to be indicted, the Tennor of which Indictment was, "That they together with others were met at *London*, &c. with "Force and Arms, in a Riotous manner &c. to the diſturbance "of the Peace of our Lord the King; and that they together with "about 200. more unknown, did aſſemble in an unlawful man-"ner, Riotouſly, Routouſly, and Tumultuouſly, under colour "and pretence of Religious Worſhip, in other manner then "was practized in the Church of *England*; and that after three "Proclamations then and there, in the name of the King, "by *John Smith* Eſquire, and *James Edwards* Eſquire, then, and "yet Sheriffs of the City of *London*, were made, That all per-"ſons there preſent ſhould from thence depart, forthwith upon

"their peril: The said *F. M. &c.* together with the other 200. "unknown, then and there, by the space of half a quarter of an hour, did remain and continue together, Riotously, Routou- "sly, and unlawfully, in contempt of the King and his Laws, "to the disturbance of his Peace, to the evil example of all others "in the like Case Offenders, and against the Peace of the said "King, his Crown, and Dignity, &c.

Justice *Moreton* sitting on the Bench, the Prisoners were called to the Bar, and as they passed along, the Goalers would have taken off their Hats, but Justice *Moreton* commanded they should be let alone, and said he would fine them five Marks apiece for their contempt to the Court, and so urged them to plead, *Guilty*, or *Not Guilty*, to which they generally answered, That they were not Guilty of the breach of any *Just Law*: So the Court took that for a Plea, as not guilty, and asked them whether they would be tryed presently or traverse; to which they answered, That if they might have a Copy of their indictment they would be tryed next day; the Court replied, That they must either try it presently, without a Copy of the Indictment, or traverse till next Sessions, and then they should have a Copy thereof and Justice done them; to which they agreed, and passed their words to appear the next Sessions.

Soon after that Sessions the *Military Forces* (who were every *First-day*, ordered by the Lievtenancy, to guard as wel the publick Meeting-House in *Gratious-Street*, as their Mercenary Priests, whom the Bishops sent thither, to read their Church-Homilies and Prayers) apprehended and took into custody, *William Bayly*, whom they carryed before the *Mayor*, and upon Information of the *Priest* (which on that day was to have officiated in that place, had he had courage to have performed what he had undertook) the *Mayor* committed *W. B.* to *New-Gate*, for opposing the Priest in officiating his *Function*, as was alledged in his Mittimus, whenas the said *W. B.* had not at any time either seen or spoke with the said Priest.

Not long after, *John Boulton*, an antient Citizen of *London*, of seventy Years of Age, and very well known to be a quiet and

and peaceable perſon, was ſent by the *Mayor* to *New-Gate*, as a Riotous perſon. And ſoon after him, *William Penn* and *William Mead*, all which were taken up by armed Forces, from their Publique and Peaceable Aſſemblies, and committed to the Priſon of *New-Gate*.

The laſt of the 6th Moneth, the Seſſions of *Oyer* and *Terminer* beginning at the Old-Baily, not only ſuch, who the former Seſſions had been *Indicted*, but thoſe newly committed, attended the Court, where conſtantly waiting three dayes in expectation of being called to their Tryals, and according to the Laws of this Land to be Condemned or Acquitted, were never once called until the 3d of the 7th Moneth, at which time the Bench of Juſtices conſiſted of *Samuel Starling* Mayor, *John Robinſon*, *Rich. Ford*, *Joſeph Sheldon*, *Geo. Waterman*, *Wil. Peak*, *Tho. Bloodworth*, Aldermen of *London*; *John Howel* the City Recorder, together with *Richard Brown*, who pretending himſelf to be ſomething learned in the Law, came there to ſecond the Recorder, and with much *confidence* took upon him to examine perſons according to his Will and Pleaſure, as if he had been a Juſtice in Commiſſion for *London*. *John Smith* and *James Edwards* were Sheriffs. O yes being made, and Silence commanded, *William Penn*, *William Mead*, *John Boulton*, *William Bayly*, *Francis Moor*, *Richard Mew*, *Richard Mayfeild*, *Richard Knowlman*, *Gilbert Hutton*, *Richard Thornton*, *Charles Baniſter*, *Job Boulton*, *Ezekiel Archer*, and *Thomas Rudyard*, were all called into the Court, and not giving that *Cap Reverence*, and *Hat Honour*, to the Place, which the *Hammon-like-ſpirited* there upon the Bench expected, and looked for, the Mayor with great indignation, openly amongſt his Brethren, firſt expreſt himſelf againſt them, (calling out to the Officers who attended the Court) ſaying, POX ON THEM, KNOCK THEM ALL DOWN.

Surely ſuch Language as this was very ill becoming that Court of Juſtice, and eſpecially to proceed from the chief Magiſtrate of this imperial City; its ſaid, He bears the Sword in vain, thats not a Terror to Evil-Doers, and a Praiſe to them that do well: If in this the Mayor of *London* has manifeſted his Chriſtian Behaviour, let him have the Praiſe thereof. A time has been when ſuch an Expreſſion for its Prophanneſs ſhould have merited

a pair of Stoks, or a Whip; and for its Rashness and Violence to be bound to the Good-behaviour.

But the misery of our Age is such, That Judgment is turned back, and Justice standeth afar of: And he alone who turneth himself from evil maketh himself a Prey.

But the under Marshals and Goalers manifesting more of humanity, then to obey the inhumane and unchristian command of the Mayor, exercised no other violence upon the Prisoners then pulling off their Hats, for which the *Recorder* rebuked them, and bid the Officers put on the Prisoners Hats upon their Heads again, which was no sooner done, in obedience of the Courts command; but presently the Clark of the Peace requires every of the Prisoners, in obedience and reverence to the Court to pull off their own Hats, the Prisoners not complying with these whimsical humors, ridiculous precepts, and antick acts of Justice, the *Recorder* gives order to the Officers a second time to pull off all their Hats, and set Fines upon their Heads, some twenty Marks, some twenty Nobles, using variety of airy expressions against, and taunting those Prisoners, whom he so illegally fined.

Which piece of ridiculous Pageantry being over, O yes being made, and Silence commanded, (as truly there was need of it) the Cryer called over the Jury, who when they had answered to their names, and taken their places, were commanded to look upon the Prisoners at the Bar, the Prisoners were also required to look upon the Jurors, and make their challenge before they were sworn; the names of the Jury men were, *Thomas Veer, Ed. Bushel, John Hammond, Henry Henley, Henry Michel, Charles Milson, Gregory Walklet, John Brightman, Wil. Plumsted, James Damask, William Lever, John Baily.* Who all took an Oath, Well and truly to try and true deliverance make betwixt the King and the Prisoners at the Bar, according to their Evidence, and so that God should them help: The Prisoners without objecting against any one man of the whole Pannel, accepted freely of them, though they had Liberty by the Law, to have made their challenge against whom they pleased. So now their Country being thus solemnly sworn to try, and deliver, &c. they were the true and proper Judges, to acquit or condemn, to deliver, or judge guilty, the persons that were given them in charge In

In this of the Jury its acknowledged, the Prisoners had right and Justice done them, and the Court acted under their Commission, according to that Clause, *Facturi quod ad Justitiam pertinet secundum Legem & Consuetudinem Anglia*: To do Justice according to the Law and Custom of *England*, contained in the Charter of the *English*-mans *Liberties*, which declares, *Quod Dominus Rex non capit imprisonabit, nec super eum ibit, nec mittit nisi per legale judicium parium suorum*: That the King shall not take, imprison, or pass upon any Free-man without tryal by his Equals. *Co.* 2 Inst. Fol. 51.

And these are called the Good and Lawful men of the *Vicinage*, whom the Prisoners had freely accepted and given up themselves and causes unto, as to their Judges, to be by them condemned or acquitted, as in their Consciences they should judge Equal, Just, and Righteous, according to the stablished and fundamental Laws of *England*. The Court proceeded to try *Wil. Penn* and *Wil. Mead*, the manner whereof is more largely set forth in a Book called, *The Peoples Antient and Just Liberties Asserted in the Tryal of* W. P. *and* W. M. *at the Sessions held at the* Old-Bailey *in* London, *the 1st, 3d, 4th, and 5th of the 7th Moneth*, 70. *against the most Arbitrary Proceedure of that Court*. *Mag. Char.* chap. 14.

Which was but an Introduction to their after Illegal and Tyrannical proceedings against the other Prisoners; for when the Court found that all their severe Menaces, scurrilous Invectives, and hard Usage towards the Jury could no wise availe, to make them alter that Verdict, which according to their Oaths, they brought in for *W. P.* and *W. M.* they presently consult how they might separate this Jury and the rest of the Prisoners, whom they had sworn to try and deliver, according to Evidence: Thereupon most *Arbitrarily* and *Illegally* against our Fundamental Laws, *Magna Charta*, the great Preservers of our Lives, Freedom, and Property: This Court imposed Fines of forty Marks apiece upon every of the Jury men, and committed them to the Goal of *New-Gate*, until they should pay the same: "Which "Proceedings are Innovations in the tryal of men for their "Lives and Liberties; and the usage of such arbitrary and illegal Power is of dangerous consequence to the Lives and Liberties

Vide p. 60. *of the Peoples Antient and Juſt Liberties aſſerted.* Printed *An.* 1670.

"ties of the people of *England*, and "tends to the introducing of an Ar- "bitrary Government; as was re- ſolved by the high Court of Parlia- ment of *England*, *Decemb.* 11. 1667. in the Caſe of Iuſtice *Keeling*.

Obſerve, All Ages have had a venerable eſteem of Juries; and this Trial of the Fact, *per duodecim liberos & legales homines*, by twelve good and lawful men, is very ancient ſaith *Cook* 1 Inſt. Fol 155. for (ſaith he) hear what the Law was before the Conqueſt, *In ſingulis centuriis committia Sancto, atque libere conditionis viri duodeni ætate ſuperiores una cum præpoſito ſacra tenentes juranto, &c.* Twelve juſt and honeſt grave men were to be in every hundred, to judge their Neighbours. And thereupon in affirmance of this upright Way of Trials by twelve men were the Charter of our Liberties made, and from time to time confirmed; and how this Trial excels others, and wherefore other Countries have them not, ſee *Forteſcue*, cap. 25. and 29. And as one obſerves our *Engliſh* Laws have taken ſo great care to find out the true matter of Fact, in iſſue, That every one of the Jurors agree together in the matter in iſſue before they give their Verdict, which is the Foundation on which the Judgment of the Court is grounded; for *Ex facto jus oritur*, as ſaith *Cook* 2. Inſt. 49.

Lambert verb. Centura.

Artic. ſuper Cart. cap. 9.

29 *Aſſize, pre.* 27.

And in the 29th Chapter of our great Charter, its ſaid, *No man ſhall be taken, impriſoned, &c. but* per legale Juditium—*by lawfull Judgment of his equals*; ſhewing that anciently the Jurors were ſole Judges, to pronounce and give judgment againſt their Neighbours, and ſuch whom they had in charge, according unto that *Myrror of Juſtice*, written by *Andrew Horn* in the time of *Edw.* 1. chap. 1. Sect. 3. "It was aſſented unto that free Tenants "ſhould meet together in the Counties, Hundreds, and the Lords "Courts, if they were not eſpecially exempted, to do ſuch Suits, "and there judge their Neighbours: Hence we may obſerve, and impartially conclude.

1. That a Jury of twelve men are (and anciently were) the proper Judges of their Neighbours Actions, Miſ-deeds, or Miſ-carriages; which is founded on Reaſon & equity, becauſe the Neighbour-

Neighbourhood is beſt acquainted with, and has the moſt certain knowledge both of the Perſons and Actions there done and Acted.

2. The Law requiring, that twelve good and honeſt men ſhould agree as one, before they determine their Neighbour to be guilty, or not guilty of the Fact or Matter charged againſt him, ſhew us, not onely that the *Fundamental Laws* of this Land have appointed its Inhabitants, merciſull Judges, but alſo ſuch who ſhould be the proper ſole and ultimate Judges (in the matters charged againſt any man) to acquit or condemn according to the Laws, as in their Conſciences they ſhould find Equitable, Juſt, and Righteous.

3. The high Eſteem our Anceſtors have ever had of theſe twelve Righteous Judges in former Ages, beſpeaks the little regard and honour that the *Recorder* of *London*, the *Mayor* and his *Brethren*, have ſhewed to their *Predeceſſors* and *Antiquity*, as alſo their low Eſteem of the *Engliſh-mans Liberties*, which in all Ages and Generations have been moſtly preſerved and ſecured by weighing mens Actions in the equal Ballance of their *Good* and *Honeſt Neighbours* Judgments.

4. We may obſerve how little regard this Court has had of the performance of ſuch *Oathes*, which they impoſe upon men at pleaſure; for, notwithſtanding they had ſworn twelve good and lawful men of the City of *London*, *Well and truly to try, and true deliverance make, between the King and the Priſoners at the Bar*: Yet they refuſe and deny theſe Jurors to perform that Oath, which they had ſo ſolemnly taken; manifeſting to the World that the *Bench* aſſumes a Power and Juriſdiction equal with the Church of *Rome*, to enforce and abſolve from Oaths and Covenants at their Wills and Pleaſures.

5. Its moſt apparent how little this Court minded or regarded their own Duty, Oaths, & Commiſſion, to do Equal Law and Execution of Right, without reſpect to perſons, according to the Laws of this Land: For when the Priſoners had given their conſent to be tryed, and the Jury had ſworn to try; without, and againſt the conſent of both, or either of them (or any Act done whereby Common Right ſhould be denied the Priſoners) or Juſtice to the Jurors) to ſe-

20 *Edw.* 3. chap. 1.

 parate

perate them each from other, is such a piece of *Tortious Justice*, which there is no Law or Custom of *England* can or will justifie or maintain.

6. We cannot but own and acknowledge the *Parliament* of the Commons of *England*, their industrious care and prudence to preserve our Lives and Liberties from the violence of Usurpation, and practice of Arbitrary and Illegal Powers over Juries, who are sworn to try and deliver their Neighbours, according to Evidence of Fact committed. And since once in their prudence they thought meet, just, and righteous, to check the Author of such *Arbitrary Innovations*, as fining of Jurors for their Verdicts, we hope they will take occasion at this time to manifest their care and tenderness of the People of *England* (whose Representatives they are) in bringing these latter Malefactors to condign punishment, that for the future Justice may run down its proper Channels, & be faithfully executed and equally dispenced according to our *Antient* and *Fundamental Laws*, and the Laudable Customs of this our Land.

Whilst the Recorder thus treated this Jury of the Citizens of *London*, the Sheriffs had summoned a new Pannel, to appear at Justice Hall the 5th of the 7th Moneth; the Prisoners, on whom the former *Jury* had sworn to pass their Verdicts upon, *viz. John Boulton, William Bayly, Fra. Moor, Tho. Rudyard, &c.* were called again into Court, in the after noon, and each of them fined as formerly, twenty Nobles apiece for their Hats. A President or Foundation for such Judgments, Fines, and Amercements, we challenge the Cities Recorder, and the conceitedly learned Mayor, to shew or make out to the World by the Laws of *England*.

So soon as the Recorder had finished or passed these new sort of *Judgments*, or rather *Inquisitory Censures* upon or against the Prisoners: He perused the Pannel of the last summoned *Jury*, and gave directions to the Clark to call them over, who as it was observed, *picks* here and there such persons that were judged the most likely to answer the malicious Ends and horrid Designs of that Bench, calling not the Jury-men in order and direct course as is usual in all Courts of *Justice*, where Right is impartially administred; and withal, bidding the Prisoners to look upon the

the Iurors, and before they were Sworn to make their Challenges.

So now a ſecond *Iury* was going to be ſworn upon them for the tryal of one ſingle Fact, which was a further manifeſtation of the Courts evil Intentions againſt them, having now neither Equity, Juſtice nor Law, for their boundaries or guides, it being ſuch a piece of practice that no Age can paralel.

Saith the learned *Cook* in his 2 Inſt. 56. *Lex eſt tutiſſima Caſſis*: The Law is the ſafeſt guard to defend the Innocent from Tort and Wrong, which declares, *That Juſtice and Right ſhall be denied to none.* Neither ſhall any man be deſtroyed by any manner of wiſe, on which *Cook* obſerves, *That every Oppreſſion againſt Law by colour of any uſurped Authority is a kind of Deſtruction*: For ſaith he, *Quando aliquod prohibetur, prohibetur & omne per quod devenitur ad illud.* The Law admits not of the leaſt wrong to be done to any man. Therefore ſaith the ſame Author, *That its the worſt Oppreſſion which is done by colour of Juſtice.*

Mag. Cha. chap. 29.

Cook 2 Inſt. 48.

Obſerve then, 1ſt The Court to ſwear two ſeveral Iuries upon one perſon, to try one and the ſame Cauſe or Fact, upon one and the ſame Indictment; What is it but under diſguiſe of Juſtice to commit ſuch Abſurdities, that our Laws allow not, or Lawyers ever before heard of.

2d If ſuch Practiſes as theſe be allowable, what perſon ſhall know when that Iury, whom the Court will permit to try him, is or ſhall be ſworn upon him, to acquit or condemn him, according to his Fact, and the Law of the Land?

3d What Right and Iuſtice can a Priſoner expect, when his Adverſary, ſhall not only ſummon what Iurors they pleaſe, but alſo in the Court pack together ſuch, whom they Judge will anſwer their *Malitious Deſigns* upon thoſe who ſhall be committed to their charge.

The Priſoners taking notice of the Courts partial *Proſecution and unequl diſtribution of Juſtice*, and bold attempts to commit ſuch *horrid Rapes* upon their Liberties, made an unanimous *Proteſtation* againſt the ſecond Iury. Firſt, Deſiring to know by what Law or juſt Preſident they practiſed ſuch ſort of Iuſtice upon them; and how the Recorder could Swear two Iuries to try one and the

same Fact &c. The Recorder answered, *That the first Jury was imprisoned for their* Misdemeanour, (meaning the not finding *W. P.* and *W. M.* guilty) *and the Prisoners must take that for an answer*: Which being far short of the Question, the Prisoners still persisted to know what Law or Custom justified their proceedings. The Recorder replyed, *That the Court had over-ruled them*: The *Prisoners* told him, That the Law should be and ought to be the *Rule* and *Guide* of all Courts of Justice, and that such Answers as (*The Court over-ruled you*) was not sufficient to satisfie their reasonable and just Demands.

Whereupon the Recorder, with great Indignation and Rage, told one of the Prisoners, *That he should be Gagged, and deserved to have his* Tongue *bored through with a Hot Iron, and his* Mouth *Nail'd to the Dust*; with many other inveterate, approbious, and tainting Expressions, telling him, That he was not bound to produce Presidents, but it should satisfie, *That the Court was of another Opinion against them, and had over-ruled them.* To which the Mayor joyned his consent, saying also, *We will over-rule you.*

By the Statute 25 *Ed.* 1. chap. 1. it was accorded, "That "the Kings Justices, Sheriffs, Mayors &c. that had the Laws "to guide them &c. *This is a Clause* (saith Cook) *worthy to be written in letters of* GOLD, *That the Laws are to be the Judges Guides. And therefore not Judges by their Arbitrary Glosses, to be Guides of the Laws, which never yet misguiden any, that truly followed them. Sub clipeo Legis nemo decipitur*, as saith the same Author. *Common Right* in 2 *E.* 3. is called *Common Law* in 14 *E.* 3. &c. and in this sence it is taken, where it is said, *Ita quod stet recto in curia*, i. e. *legis in curia. The Law is called* rectum (that is *Right* or a *Rule*) because it discovereth that which is tort, crooked, or wrong; so as *Right* signifieth *Law*, so *Tort*, *Crooked*, or *Wrong* signifieth *Injury*, and *Injuria est contra jus* against Right. *Hereby* (saith Cook) *the crooked Cord of that which is called Discretion appeareth to be unlawful.* *Cook* 2 Inst. 56.

So that (First) its plain, The Law rules and guides, but Discretion, Force, and Violence over-rule.

Secondly, The just Judge makes the Law his Rule and Guide, but the Unjust over-rules the Law: So that its apparent, that this over-ruling is no other then by Discretion (which is tort, crooked,

crooked, and rough) to oppose with violence that Justice and Right, which the Laws allow and afford every Free-man of *England*; then there's no defence to be made against the *Recorders* over-ruling, that is gone beyond the Laws Rule, to his own over-ruling Will and Discretion.

The Clark of the Peace, in obedience to the Courts command, proceeds to Swear the second Jury upon the Prisoners, upon which some of the Prisoners objected against several of them, as one *Steed* the Fore-man, and several others: The Recorder denied they their challenges, telling them still that *the Court over-rul'd them.* And although Judge *Cook* in his 3 Inst. fol. 27. saith, *That the end of Challenge is to have an indifferent Trial, and which is required by Law, and to bar the Party indicted of his lawfull Challenge, is to bar him of a principal concern in his Trial*; yet this *Recorder*, who doth, or should know the Law, and those Rights and Priviledges which it affords the Prisoners (both in the Challenge of the Array of the Pannel, and also of the Poles) admitted their *Challenges* to neither, but cried out still, *The Court over-rules you*; that as well the Spectators, as Prisoners, were fully satisfied, that the purpose and resolution of the *Bench* was to make them subject and slaves to their Injustice, and most Tyrannical Will and Pleasure, in dispite of the Laws and that undoubted Right and Liberty, which is the best Birth-right the Freeman of *England* hath.

The names of the Jury were *Henry Stead*, Fore-man, *Edward Dermer*, *Thomas Mosse*, *John Ashborne*, *Edward Langton*, *Henry Offily*, *Edward Hanney*, *Walter Hungerford*, *Tho. Pendleton*, *Robert Twiford*, *Rob. Cooper*, and *Daniel Walton*.

As its most certainly true, that every Freeman of *England* may, and doth challenge the benefit of *Ancient Fundamental Laws* to protect and defend his *Life* and *Liberty* against violence and oppression, most especially that which is contained in the 29th Chapter of the Charter of Liberties, viz. *Not to be taken, imprisoned &c. but by Judgment of his Equals*, (which *Cook* calls in his Exposition) twelve of his good, and honest Neighbours. And to have equal *Justice* and *Right* done him, according to that Charter, as by the first Statute of 20 *E.* 1. So its as true that by the *Recorder*

order of *London*, the *Mayor* and his *Brethren*, those Rights and Priviledges have been denied, those *Laws*, and such who claim a benefit from them, have been contemned and over-ruled by the Censures and Judgements which they passed upon, and carriages and usages which they practised toward both Prisoners and Jurors, so that this consequence will follow.

First, Although a Jury of good and honest men shall be sworn well and truely to Try, and true Deliverance make between &c. according to their Evidence, yet if the Verdict that is confirmed by the Oathes of twelve men (agreed together as one) be not congruous to the will and humour of one Person sitting on the Bench (as the *Recorder*) these twelve Iudges shall be Fined, and Imprisoned as *perjured Persons*, and as such who are guilty of as high *misdemeanors* as any they came to judge and try.

Secondly, When twelve good and lawfull men shall be so impannelled and sworn to try &c. and the Prisoners shall accept of them without Challenge (except after this the Court also approves of them) these first sworn shall be imprisoned, and another Jury summoned, and packed together, to serve and answer the ends of the *Informers* and *Prosecutors*, upon the *Prisoners*, contrary to Law, any Usage or Custom whatsoever.

And now we dare put those *Questions* to be resolved by the very Enemies of these Prisoners that were so tryed by that Court, Whether this Bench (and the Sheriffs of *London*, who from the beginning were either Prosecutors or Informers against these Prisoners) First, So menacing and threatning and afterwards Fining and Imprisoning one Jury. Secondly, Summoning, packing, and enforcing another Jury upon Prisoners, (to try that Fact which a former Jury were sworn to determine) against the Law, Usages, and Practices of all Courts of Judicature; have not with *Violence oppressed* the *Freemen* of this Land, and denied them that *Justice* and *Right*, which by the *Fundamental Laws* they ought freely to have and enjoy, and which also these Justices (by their Commissions, Oathes, and Duty of their Places) ought to allow, *yea or nay?*

The second Jury being thus sworn, the Clark of the Peace read over the Indictment against *Fra. Moor*, *Richard Mew*, *Rich. Mayfeild*,

Mansfeild, *Richard Knowlman*, and *Gilbert Hatton*; as also that against *Rich. Thornton*, *Charles Banister*, and *Job Boulton* (the substance whereof is before set down) and their *Indictments* for form and matter being alike, they were tryed together.

The Cryer calling the Witnesses, the Court proceeded to Tryal. The Prosecutors and Witnesses were one *Whiting* the Beadle of *Bridgeward*, and the rest were the Sheriffs Officers, whom the Mayor had bound over to prosecute the Prisoners: Whence it may be observed, That either the Sheriffs themselves, or their Servants, were the Informers in this Work, from which so many large perquisits have fallen to them, as hereafter shall be mentioned.

The Substance of the Witnesses Evidence was, *That they saw the Prisoners in* Grace-Church-Street *in* Whitehart-Court, *amongst the Assembly of People there met together, and that they stayed there till after Proclamation was made, That all persons there present should depart.*

The Prisoners being asked what they could say for themselves, they answered, That they *owned* that they were at *Gratious-street*, met together to worship the true and living God in Spirit and in Truth, against which there is no Law: And further said, That the *Indictment* consisted of much matter, as meeting with Force and Arms to disturb the Peace, and continuing there Riotously, Routously, and Tumultuously, in contempt of the King and his Laws, and against the Kings Crown and Dignity, which none of the Witnesses had sworn, therefore they desired to know upon what Law they were Indicted, and that the Law might be produced, and read to the Jury, that thereby they might know whether they had made a Breach of any just Law. The Recorder answered, That he was not bound to produce the Law, for it was *Lex non scripta*. Then (replyed) the Prisoners, How shall the Jury know whether we are guilty of the Breach thereof. Said the Recorder, It is the *Common Law*, which you have broken in your tumultuous Assemblies, and staying there after Proclamations were made to depart. The *Prisoners* objected, That the Indictment alledgeth three several Proclamations were made, when as but one was made that day: Whereupon the Witnesses were again examined, whether there were not three Proclamations made? Who answered, that there was but one made: Upon which the Mayor demanded of one of the Witnesses, whether O

YES

YES was not said thrice? Who answered, That the Officer who made Proclamation said OYES three times, before he commanded the People in the Kings Name to depart: Then said the Mayor, That was three *Proclamations*. Such a piece of Violence in the explanation of a Word, that has not been known in a Court of Justice.

The *Prisoners* further urged, That they were alwayes quiet and peaceable in their Assemblies; That the Law against Riots were never intended against them, but *Popish*, or such like Disturbers of the Peace. To which the *Recorder* answered, That the PAPISTS were better Subjects to the King then they were, and that they were a stubborn and a dangerous People, *and must either be brought under, or there were no safe living by them*.

The Prisoners offering to vindicate themselves from those foul Aspersions laid upon them by the Recorder, telling him, That they had broken no just Law to their knowledge, and that they never had been guilty of being Rioters and Routers, as was pretended, which they desired the Jury to take notice of, and that there had not any such Proof been offered by the Witnesses.

Whereupon the *Mayor* and *Recorder* commanded the Goalers to thrust them into the Bale-dock, and in their absence the Recorder gave his Charge to the Jury, not so much summing up the Evidence (which truly proved not the tenth part of the Indictment) as giving in matter of his own, of foul *Criminations*, telling the Jury that they were a Refractory People, such who delighted in deeds of Darkness, and that they must be crushed, or there would be no living by them; so that upon the *Indictment* they must find them guilty.

Now surely there never was greater Oppression and Violence manifested in a Court of Justice, either upon the just and righteous Law, or a quiet and peaceable People, as has been acted by the Lievtenancy (its pitty to say Magistrates) of the famous City of *London*: Had there been colour for their proceedings by any Statute Law of the Land, pointing out the Offenders and their Punishment, these several Actings of theirs might have been in some measure tollerable; but when men dare at once, against the very face of *Law*, *Justice*, *Equity*, *Reason*, *Right*, and *Liberty*, commit such Oppressions upon their Fellow-Creatures, yea, on

a People too, who never yet could be justly charged for using Violence, Force, or Arms against any man, no, not so much as to defend themselves against such, who have violently and inhumanly abused and tortured their bodies, without the least colour of Warrant or Authority from the Civil Magistrate. We cannot but stand in admiration of this Court of Indicature; Let us a little see the Judgments of our Sages of the Law, touching the matter of Riots, in former and latter times, not only Statute Law, but also the Opinion of the Learned.

First see the Statute of 17 *R.* 2. chap. 8. (1393.) It was Enacted, "That the Sheriffs, and all other the Kings Officers, should suppress Rioters, and Imprison them. 13 *H.* 4. chap. 7. (*An.* 1411) "If any Assembly or Rout of people against the Law be made, that "three or two Justices of the Peace and Sheriff, or under Sheriffs, shall come with the Power of the County (if need be "to arrest them, and shall record what is done against the Law; "and that the persons by that Record shall be convict in manner, "as inforceable Entries. 2 *H.* 5. 8. "The Kings Liege People, "that were Travellers, should be assistant to the Justices &c. "when warned to ride with them in aide to resist *Riots, Routs &c.* upon pain of Imprisonment.

The *Rioters* and *Routers*, mentioned in these Statutes, were certainly such persons, who did really meet with *Force* and *Arms*; else, what need was there of the Power of the Country, as is directed, to quiet, appease, and arrest them; or else, what need of engaging Travellers to resist them; notwithstanding, they may have the Power of the County to apprehend them.

2. Read the *Judgment* of the Oracle of our Laws, *Cook* in his 3. In. c. 79. tittle Riots, Routs, & unlawful Assemblies, Forces &c. saith thus, Riotum *cometh of the French Word* Rioter, i. e. Rixari; *And in the Common Law signifieth, When three, or more, do any unlawful Act, as to beat any man, or hunt in his Park, Chase, or Warren, or to enter or take possession of another mans Land, or to cut or destroy his Corn, Grass, or other profit &c.*

Lamb. intr. Legib. In. cha. 13, 14, 15. vide *Abn.* chap. 26.

Routa *is derived of the French Word* Rout, *and properly in Law signifieth, When three, or more, do any unlawful Act, for their own, or the common quarrel &c. As when Commoners break down Hedges, or*

Pales, or cast down Ditches, or Inhabitants, for a way claimed by them, or the like.

An unlawful Assembly is when three, or more, assemble themselves together, to commit a Riot or Rout, and do it not.

So that its most plain and evident, That a Quiet, Religious, and Peaceable Assembly of people were never intended by our Predecessors, to be punished as Rioters, Routers, and unlawful Assemblies, as our Law-Executioners now a dayes would have it.

The Lord *Cook* said, *Interest regi habere subditos pacatos*, That the Kings Interest was to have his Subjects peaceable. And what must it be the inferior Officers Interest to have them accounted otherwise, and that for filthy Lucre sake?

A new Contrivance to advance the Sheriffs perquisits, which our Fore-fathers were ignorant of, (*viz.*) The Sheriffs to ride to an Assembly of People, whom they, or their Confederates, against all Law, had forceably kept out of their House and Freehold; and because (upon *Proclamation* by them made, for which they have no Ground or Authority by the Law) the people presently departing not from their *own Ground*, and before the Door of their *own House*, they shall be committed to Goal as Rioters, condemned as such, and the Sheriffs shall have 400. or 500 l. for their dayes work, out of these Innocent persons Fines.

This new construction of Religious Assemblies seems the more strange, by reason, there cannot be one President produced to back this upstart Opinion, that Religious Meetings deserve of late years that ignominious term of Riots or Routs.

So that this seemly piece of Law, or Wit, must be owned to have had its Rice, Spring, and Original, from the prerogative brain of *S. S.* Mayor of *London*, and confirmed by the City Recorder, who doubtless will not be the last that may repent of his dayes work.

The next whom the Court called to their Tryal was *Ezekiel Archer*, and *Margery Fann*, who being indicted for Rioters the Sessions before, and the Evidence being deficient, the Court coveting to come off with credit in all such *Indictments*, as were of the new stamp, ordered an *Indictment* for *Felony* to be read against them, which they had forged and framed for

for that purpoſe, and piece of Iniquity, which well deſerves the ſearch and *condign Puniſhment* for the Contrivers; ſo theſe two were found *Not guilty.*

The ſame day this Bench called *T. Rudyard* into Court; when the Clark had read over the firſt *Indictment*, which the Mayor the former Seſſions declared was not drawn up according to Inſtructions and Evidence; and alſo the ſecond, which the Mayor ſaid he would ſtand by, and proſecute: The Informers Witneſſes were ſworn, *viz. N. Grove* and *J. Tillot*; *Grove* being firſt to give in his Teſtimony, declared, *That there was an Indictment drawn againſt* S. Allingbridge, *for ſaying, The firſt man that diſturbed Mr.* Vincent *ſhould never go out of the Houſe alive*; *and that he ſaw* T. R. *take it out of Mr.* Lees *hand, and told him that it was loſt, and* T. R. *would go with him to Mr.* Tanner, *and drink a pint of Wine with him, and draw up a ſlight Bill that might not be found.* So (ſaid the Mayor) here's both the Indictment proved already; which Evidence *Grove* delivered, as being one entire Action and Diſcourſe; and being asked what time this Diſcourſe was, whether when *T. R.* took the Bill; he anſwered, He did not well know; and *T. R.* asking him ſome further Queſtions, the Mayor interrupted him ſaying, He was not to examine the Kings Witneſſes. *J. Tillot* was next called, who ſwore that *T. R.* acknowledged to him, that he had the Indictment. *T. R.* acquainted the Court that he owned that he was at the Seſſions at *Guildhall*, where *S. Allingbridge* attending, requeſted him to enquire and know from the Clark, whether his *Adverſaries* had drawn any Bill of Indictment againſt him, and what the Indictment might be: Thereupon *T. R.* enquired of the Clark, whether he had drawn ſuch a Bill: *Jo. Forman*, an Officer, ſtanding by him, with ſeveral Bills in his hand, gave this Bill into *T. R*'s hand to read, which when he had done, in open Court, returned the Bill to *Forman*, and immediatly went out of Court, ordering *S. A.* to ſend for his Witneſs to try the Indictment, in caſe the grand inqueſt ſhould find it *Billa vera*. The Evidence, as it was much contrary to Truth, ſo it was as far ſhort of proving the Indictments, as by the enſuing Exceptions may appear. But what was deficient in that reſpect the Recorder made up in his charge to the Jury.

Exceptions to the Indictment.

First, It appears not by the Indictment, that the Bill of Indictment againſt *S. Allenbridg* was Conuſable to the Court, it being againſt the Juſtices Oath to take notice of it before the Grand Inquelt had found it.

Secondly, It appears not that the words charged againſt *Allenbridg* were puniſhable by Law; for the Houſe mentioned in the Indictment might be *Vincent*'s dwelling Houſe, ſo Burglary to break into it without lawfull Warrant.

Then, as to the Evidence to the firſt Indictment, 1. No proof that *Grove* ever read the Indictment (which indeed he could not) againſt *S. A.* ſo he ſwore peremtorily upon the Clarks information, which was a falſe Oath.

2. That *T. R.* took the Bill out of *Lee*'s hand, could not be, for the Officer keeps the Bills of Indictments, when the Witneſſes are ſworn, and not the Clark of the Peace.

3. Improbable that *Grove* ſhould know that Bill amongſt ſo many more; but impoſſible that he ſhould ſee the Bill taken away (knowing it) and not mention one word of it all that day, no not when the Bill was pretended to be wanting.

4. Not ſworn he took it out of Court.

5. Not ſworn that Juſtice, or that any courſe of Law was hindred againſt *S. A.*

6. As to the *acknowledging* the Indictment to *Tillot*, it was not three hours before the Trial; who asking *T. R.* whether he ever read the Indictment; *T. R.* anſwered, he did, and left it in *Forman*'s hand, why thats enough ſaid *Tillot*, the Mayor ſent for me to ſwear it, which I could not do before.

7. If *T. R.* had taken the Bill, it could not benefit *S. A.* or hinder the Proſecutor.

8. That T. R. ſhould hazard his reputation in a thing of no value, wherein he could neither advantage his Friend, nor prejudice his Enemy, could not ſtop the proceedings half an hour, yea in a quarter another might have been written and preferred, is very improbable.

9. Its

9. Its moſt apparent, that if *Grove* did not perjure himſelf, in ſwearing ſuch a Bill was drawn againſt *S. A.* (he having neither read it, or had copy of it) he or the Mayor, or ſome of the Confederates muſt themſelves have concealed the Bill, and kept it in their own cuſtody, elſe *N. Grove* could not ſwear to it, one of which muſt neceſſarily be.

As to the 2d Indictment, the words there pretended to be ſpoken, 1. If true, were not adviſing *Grove* to do an Action, but telling him that we would go &c. ſo nothing being done in proſecution of the words it was only diſcourſe.

2. Not ſworn that the adviſe was taken.

3. Improbable that *T. R.* ſhould thus diſcourſe to a Stranger, whom before he had never ſeen.

4. That he ſhould undertake to go to *Tanner*, that was as much a Stranger to him.

5. *T. R.* never came afterward to *Grove*, nor ſpoke with *Tanner*; but *S. Allingbridge* was tryed and convicted the very ſame Week, in an Adjournment of the ſame Seſſions.

Now whether there was either ſufficient Cauſe for an Indictment. or apparent Proofs to Evidence the Truth of theſe upon which *T. R.* was tryed, or whether all theſe pretented Crimes and Miſdemeanours, were not the product of the Mayors malicious, envious, and inveterate ſpirit, cauſleſly carryed on againſt him (who not only appears to be the firſt Informer, but the Maintainer and Proſecutor of the Quarrel, as alſo Evidence and Judge upon) let every unprejudiced perſon (ſeriouſly conſidering) give his Judgment.

The Jury was commanded to withdraw, which for the formalities ſake they did, and not longer ſtaying then about a quarter of an hour, returned again, and brought in the nine perſons that were tryed, guilty in manner and form as they ſtood indicted, which ſome of theſe Jurors had over their Cups ſworn they would do, if ever they come to try the *Quakers*.

John Boulton and *William Bayly* were the laſt called to their Trial, who were indicted ſeveral, For that *they ſuch a day, and year, and place, with Force and Arms &c. with Two hundred more Perſons, were aſſembled together, to diſturb the Kings Peace; and being ſo aſſembled,*

ſembled, they unlawfully took upon themſelves to Preach and Teach to the People; then and there aſſembled and congregated, by reaſon whereof a great concourſe of People did remain together, in contempt of the King and his Laws, to the diſturbance of his Peace, to the terror and diſturbance of his Subjects, unto the evil example of others, and againſt the Kings Crown and Dignity &c.

Not guilty being pleaded, the Informers Evidence being produced, ſwore, That they ſaw or heard them ſpeak or preach to the People, which was ſufficient for the Court to make out the whole Indictments; for the *Recorder* ſaid, the Jury were only Judges of matter of Fact; ſo that if the Jury have Evidence they *Spoke or Preached*, the Court ſayes that muſt be with *Force and Arms, unlawfully and tumultuouſly, to diſturb the Kings Peace, and that Tumults of People were occaſioned thereby, and continued together, in contempt of the King and his Laws, to the diſturbance of his Peace, terror of his People, evil Example of others, and againſt the Kings Crown and Dignity*: A ready way to perjure Jurors, and oppreſs the Innocent.

These are the Concomitants of Speaking in the Name of the Living God, and worſhipping him in the Wayes of his own appointments: And although the Priſoners deſired to ſee the Law that their Adverſaries pretend they have broken, they ſhall have neither that, nor reaſon produced that might give ſatisfaction either to the Priſoners or Spectators; the Lord *Cook* gave this as a Rule, viz. *Incivile eſt, parte una perſpecta tota re non cognita de ea judicare*; That it was uncivil, ſeeing only one part, to give Judgment on the whole matter. Yet how little regarded theſe Jury men, or the Court, to know the whole matter before they gave Judgment upon the whole Charge. Surely this Jury was packed to be cut-throats to their own Liberties, and Reputations alſo, or elſe they would have better regarded what they undertook; to find guilty every one in manner and form, and yet not the tenth part of any Indictment proved; to be ſworn truely to try, according to Evidence, and yet to find that for which no Evidence was given. Is it poſſible that they ſhould commit this horrid perjury out of a ſlaviſh fear, debaucht principle, and horrid partiallity, and yet be quiet from the terrors of Conſcience,

ence; nay, for which we are ſure they cannot free themſelves without ſerious repentance.

At the cloſe of the *Seſſions* all the Priſoners (who had been found guilty by this Jury of the Benches) were called down to the Seſſions-Houſe, where all day they expected to be called into Court to receive *Judgment*, being prepared alſo to give in their *Exceptions* in Arreſt of Judgment, purpoſed to be delivered to the *Recorder* in writing; but of this expected Defence they were all prevented, the Bench giving their Judgments or Cenſures without calling any of the Priſoners to hear them; the *Tenor* of which, as appears by the *Newgate* Book, are in this manner, *John Boulton* fined forty Mark, *William Bayly* fined thirty one pound thirteen ſhillings four pence, *William Penn* forty Mark, *Francis Moor* fined twenty Mark; *Richard Mew*, *Richard Mayfeild*, *Rich. Knowlman*, *Gilbert Hutton*, *Ric. Thornton*, *Charles Baniſter*, *Job Boulton*, *T. Rudyard*, every of them fined twenty Mark a piece; *Ezekel Archer* fined forty Mark; for divers evil Carriages and Contempts in words and deeds by them ſeverally, openly, voluntarily and obſtinately committed in and towards the Court. And the *Court* gave further Judgments or Cenſures, viz. *Francis Moor*, *R. M. R. M. R. K. G. H. R. T. C. B. I. B. Katherine Everett*, *J. Boulton*, and *W. Bayly*, fined every of them twenty Marks apiece, and *T. R.* fined a hundred pound, being convict of ſeveral Treſpaſſes and Contempts, and to be committed to Priſon until every of them pay their ſeveral reſpective Fines.

The Court underſtanding that their Goal of *New-Gate* was ſo full of Priſoners, that there could be no tollerable entertainment for theſe new Convicts, diſcourſed with the Keepers where to Impriſon them; ſo the Bench having an account, that out of the *Dogg*, by *New-Gate*, that very Seſſions there dyed two perſons of the *Spotted-feaver*, or *Plague*, (one the Maſter of the Houſe, the other a Priſoner, whom *Jo. Robinſon* Alderman had there ſent for refuſing to take an Oath, preſcribed in the 3d of *Ja.*) whereupon they were commanded to be Impriſoned there, and a Keeper ſet upon them to prevent their going abroad upon the moſt urgent occaſion. Where through the Goodneſs of the Almighty they were preſerved in Health, beyond the expectation of their Friends, or hopes of their Enemies, who doubtleſs out of an evil

evil end and purpoſe ſent them thither, into an infected houſe.

But that Goalers, of what degree or ſtate ſoever, may in ſome meaſure know the Duties of their reſpective places, and not through ignorance abuſe ſuch who are committed to their *Charge*, we have thought it meet at this time to inſtance and give an account what their duty is to their priſoners, according to the Laws of this Land, which all Goalers are oblieged under great Penalties to obſerve, and the people of this Land to preſerve, as their Liberties, leaſt by ſuch neglect, ſlavery be inſenſibly drawn upon them.

By the Common Law we find, *Quod care ad continendos non ad puniendos haberi debet*, as *Bracton* lib. 3. fol. 105. *Goalers are ordained to hold Priſoners, not to puniſh them.* For Impriſonment by the Law, is (neither ought to be) no more then a bare reſtraint of Liberty, without thoſe illegal and unjuſt Deſtructions of cloſe and open Priſon (as is uſual) See *Stamf.* ple. Cro. fol. 70.

Therefore *Cook* in his 3 Inſt. 91. ſaith, *That if the Goaler keep the Priſoners more ſtreightly then he ought of right, whereof the Priſoner dieth, this is Fellony in the Goaler by the Common Law. And this is the Cauſe, That if a Priſoner dye in Priſon, the Coroner ought to ſit upon him.* See alſo the ſaid *Cook* Fol. 34. *Cap. Petty Treaſon*; how Priſoners are to be uſed wherein is alſo an account of an Indictment of a Goaler for evil uſage of his Priſoner, *Fol.* 35 *in Trin. Terme*, 7 *E.* 3. *cor. Rege rot.* 44.— *Præſentat. quod ubi quidam* Robertus Bayhens, *de* Taveſly *captus fuit, & in priſona Caſtri Lincoln detentus per quodam debito Statut. mercatorii in Cuſtodia* Tho. Boteler, *Conſtabulurii Caſtri de* Lincoln *ibid predict.* Tho. Boteler *poſuit ipſum* Robertum *in profundo Gaole inter Lenones in ubi Priſona, contra formam Statuti &c. et eadem profundo detinuit, quouſq*; *idem* Robertus *fecit finem cum eo de* 40 s. *quos ei ſoluit per Extortionem*: That whereas one R. B. of T. was taken and detained in the Priſon of *Lincoln* Caſtle, for a certain debt of Statute Merchant, in the cuſtody of T. B. Conſtable of the Caſtle of L. aforeſaid; That the ſaid T. B. put the ſaid R. into the Common-Goal amongſt Thieves, in a filthy Priſon, contrary to the form of the Statute

Britton fol. 18.

Flet. *lib.* 1. chap. 26.

1 E. 3. cap. 7.

Statute &c. and there detained him, till he had paid him a Fine of 40 s. Whereupon *Cook* makes this Observation, *So as hereby it appeareth, where the Law requireth that a Prisoner should be kept* (Vi salva & arcta custodia) *that is, In safe and sure Custody; yet that must be without any pain or torment to the Prisoner.*

So *Co.* 3 Inst. 52. saith, *If a Prisoner by the Dures, that is Hard-usage of the Goaler, cometh to untimely Death, this is Murder in the Goaler.* And in the Law implieth Malice, in respect of the Cruelty.

Horn, in the Mirror of Justice page 288. saith, *That it is an Abusion of the Law, that Prisoners are put into Irons, or other pain, before they are attainted.*

See also *Cook* 3 Inst. 34, 35.

And *Horn* also pag. 34, 36. Reckons the starving of Prisoners by Famine, to be among the 1. fol. 55, 56. Crimes of *Homicide* in a Goaler.

Vox plebis par.

Which also *Cook* in his 3 Inst. chap. 29. Title of *Felony* in *Goalers* by *Dures* of Imprisonment &c. by Statute and by the Common Law. Fol. 91.

And next, let us see what the Law saith for the Fees due to Goalers, The Mirror of *Justice*, p. 288. tells us, That its an abusion of the Law, that Prisoners or others for them, to *pay* any thing for their *Entries* into the Goal, or for their *Going out*: This is the Common Law, there is no Fee due to them by the Common Law. See what the Statutes say, The Statute of *Westm.* 1. cha. 26. saith, "That no Sheriff, or other Minister of the King, "shall take Reward for doing their Offices, but what they take "of the King, if they do they shall suffer double to the party "agrieved, and be punished at the will of the King. Under this word, *Minister* of the *King*, are included *all Escheators, Coroners, Goalers, and the like.* See *Cook* 2 Inst. fol. 209. affirms. And agreeable is *Stamf. pl. Coron.* 49. Nay by the Statute of 4 *E.* 3. chap. 10. Goalers are to receive *Theeves* and *Fellons*, taking nothing by way of Fees for the receipt of them. So odious is this extortion of Goalers, that very Theeves and Fellons are exempt from payment of Fees.

And we find in our Law-Books, That no Fees are due to any Officer, Goaler, or Minister of Justice, but only those which

 are

are given by act of Parliament, for if a Goaler will preſcribe for any Fees, the Preſciption is void, becauſe againſt this Act of Parliament, made 3 *E.* 1. being an Act made within time of memory, and takes away all manner of pretended Fees before, and we are ſure none can be raiſed by colour of preſcription ſince: and therefore we find by the Books of 8 *E.* 4. fol. 18. *That a Marſhal or Goaler cannot detain any Priſoner after his diſcharge from the Court, but only for the Fees of the Court* (the Court being not barred by this Statute of *Weſm* 1. aforementioned) *and if he do, he may be indicted for Extortion.* And agreeable to this is the Book of 21. *E.* 7. fol. 16. where amongſt other things its held for Law, *That if a Goaler or Guardian of a Priſon, takes his Priſoners proper Garment, Cloak, or Money from him, it is a Treſpaſs, and the Goaler ſhall be anſwerable for it*: So that we may undeniably conclude, That there is no Fee at all due to any *Goaler* or *Guardian* of a Priſon from the Priſoner (but what is due unto him by ſpecial Act of Parliament.

And if a Goaler or Guardian of a Priſoner, ſhall take any thing as a Fee of his Priſoner, he may and ought to be *Indicted* of *Extortion*, and upon conviction to be removed from his Office; and if his Priſoner, by Conſtraint, Menace, or Dures, be enforced to give him Money, he may recover that Money againſt the Goaler again, in an Action of the Caſe at Common Law.

Item, The King conſidering the great Perjury, Extortion, and Oppreſſion, which be and have been in this Realm by his Sheriffs, Under-Sheriffs, and their Clarks, Bailiffs, and Keepers of Priſons &c. hath ordained by Authority aforeſaid, in eſchewing all ſuch Extortion, Perjury, and Oppreſſion, that no Sheriff ſhall let to Farm in any manner his County, nor any of his Bailiwicks. Nor that any of the ſaid Officers and Miniſters, by occaſion, or under colour of their Office, ſhall take any other thing by them, nor by any other Perſon to their uſe, profit, or avail; if any perſon by

Stat. 23 *H.* 6. chap. 10.

Sta. 4 *H.* 4. 5.

Raſt. predict. fol. 318.

Cro. pred. 365.

21 *H.* 7. fol. 16.

by them or any of them to be arreſted or attatched, for the omitting of any Arreſt or attachment to be made by their Body, or of any perſon by them, or any of them (by force or colour of their Office arreſted or attatched) for Fine, Fee, Suit of Priſon, Mainprize, letting to Bail, or ſhewing any Eaſe or favour (to any ſuch perſon ſo arreſted or to be attatched) for their Reward or Profit; but ſuch as follow, that is to ſay, For the Sheriff 20 d. The Bailiff which maketh the Arreſt or Attachment, 4 d. And the Goaler of the Priſon, if he be committed to ward, *Reſt.* predict. fol. 371 4 d. —— And that all Sheriffs, Bailiffs, Goalers, or any other Officer or Miniſters, which do contrary to this Ordinance, in any point of Stat. 21 *Ed.* 0. the ſame, ſhall loſe to the party in this behalf indammaged or grieved, his trebble Dammages, and ſhall forfeit the ſum of 40 l. for every ſuch Offence, the one moiety to the King, the other to the Proſecutor, to be Recovered at Common Law, in either of the Courts of Kings-Bench, or *Common-Pleas* at *Weſtminſter*.

This is a perfect Account of the Goalers Fees in all Caſes, where perſons are laid in Priſon upon Civil Matters and Cauſes, which Fee of 4 d. is more then any other Statute or Law allows them to take from their Priſoners: But in ſuch Caſes where the King is party, its ſtabliſhed, "That the Priſoners in all the "Kings Priſons ſhould be maintained at the Kings Charge, and "out of the Kings Revenues, according to the old Law of the Land, much leſs to have Money extorted from him by the Goaler. But look into the Priſons in and about the City of *London*, what horrible Oppreſſions, Extortions, and Cruelties, are Exerciſed upon the Free-born People of *England*, yea in moſt Priſons throughout this Kingdom,

Which exceſſive *Amerciaments* and Fines (after all their other Partial Dealings, Lawleſs Proceedings, and Arbitrary Carriages towards the Priſoners, from firſt to laſt) do manifeſt and evidence to the World, their Malice and Envy againſt an Innocent, Upright, Quiet, and Peaceable People. What proportion is there here betwixt the pretended Fault and the aſſeſſed Fine, provides not the fourteenth Chapter of the Great Char-

ter, against such uniust Judgments and partial Censures, which declares; "A Freeman shall not be Amerced for a small Fault, "but after the quantity of the Fault, for a great Fault, after "the manner thereof; and the Amercement shall be assessed by "the Oath of Honests Men of the Vicinage.

Here's Justice and Equity, Righteousness in Judgment, which affords every man Common Right, declares, That all Offenders ought to be *Amerced*, by their Neighbourhood, according to the quantity of the Trespass. Wherein have these Judges (who are commanded by the Statute of 25 *E.* 1. Confirmed by *Pet. Right* 3 *Car.* 1.) allowed the Charter before them in Judgment, in all its Points &c.

It may truly be said, that our ancient, just, and fundamental Laws, which *Cook* on the 14th chapter of *Magna Charta* calls a Law of Mercy, are (as the same Author there writes) now turned into a Shaddow; for by the Wisdom of the Law, *these Amercements were instituted to deter both Demandants and Plaintiffs from unjust Suits, and Tenants and Defendants from unjust Defences, which was the Cause in ancient time of fewer Suits, but now we have but a Shaddow of them. Habemus quidem senatus consultum, sed in tabulis reconditum & tanquam gladium invaginatum repositum*: Yea, our antient Charters are as a Sword in its *Sheath*, which if drawn, are and will be sufficient to defend us against all Injustice, Tyranny, or Oppression whatsoever.

Cicero.

2 Inst. fol. 28.

But its often objected by many of their Aversaries, *That the* Publick Meeting Houses, *wherein the People called* Quakers *are, and have been of late accustomed to meet in, and assemble themselves together, and out of which the* Military Forces *do from time to time hale and expel them, and by force keep and restrain them from entrance, are by Orders of the King and Council, invested and established in the now King, and that he has right to dispose of them, as his own Inheritance, yea, to pull them down, sell and burn the material of them, as his inferiour Officers have lately done by some about* London: *and thereupon such who come there to assemble together are* Trespassers, Rioters, Routers, and unlawfull Assemblies, *and as such are rightly and duely punished according to the Laws.*

To

To which is answered, That by the *Ancient and Fundamental Laws*, which have been already recited, as the 29th of *Magna Charta*; There is no mans Right, Property or Free-hold shall be taken away from him, but by trial of a Jury, and the Law of the Land. Read Stat. 2 E. 3. 8. 5 E. 3, 9. 14 E. 3. 14. 28 E. 3. 3. *Regist.* fol. 186. *Cook pla.* fol. 456. *Cook 2 Inst.* 45. 3 *Inst.* 136.

And see a Statute of latter date, 17 *Car.* 1. *cap.* 10. Entituled, *An Act for Regulating the Privy-Council &c.* which speaks in this wise; *Be it likewise declared and enacted by the Authority of this present Parliament, That neither his Majesty, nor his Privy Council, have or ought to have any Jurisdiction, Power or Authority by English Bill, Petition, Articles, Libel, or any other Arbitrary way whatsoever, to examined or draw into question, determine or dispose of the Lands, Tenements, Hereditaments, Goods or Chattels of any the Subjects of this Kingdom; but that the same ought to be tried and determined in the Courts of Justice, and by the ordinary course of Law.*

Also Learned *Cook* in his 2 *Inst. fol.* 36. saith, *The Common Law* (of which the great Charter is Declaratory) *hath so admeasured the preragative of a King, as he cannot take or prejudice the Inheritance of any.*

So that by the Law of the Land these pretended Offenders are still rightfully possessed of their own Houses and Places of publique Assemblies; and their cruel Adversaries have no more Property, Right, Interest, or due Claim therein or thereto, then a Pirate has to the peaceable Merchant-mans Ship, a Robber has to the innocent Travellers Purse, or the *Wolf* to the Blood of the harmless *Lamb*: And in case such Laws as these will not preserve that interest which those people have to their Inheritances and Properties, we can none of us expect to have our Rights or Liberties, Wives or Children, yea, or our lives secured unto us longer then pleaseth or liketh the *Will* and *Pleasure* of cruel and ravenous *Adversaries*.

Its worthy taking notice of, that after the Jury had, on so slight ground, brought in T. R. amongst others guilty in manner and form, how palpably the Court manifested their envy and malice, in the Fines imposed upon him: And though, as is declared by the Statute of 20 E. 3. cap. 1. *That Justices shall do every*

Right.

Right to all people, without shewing favour more to one then to another: According to that just Law, *Lev.* 19. 15. *Ye shall do no Unrighteousness in Judgment, thou shalt not respect the person of the Poor, nor honour the person of the Mighty, but in Righteousness shalt thou judge thy Neighbour.* Yet for a piece of written Parchment, the value whereof was not 1 d. a thing whereof a Court of Justice could not take recognizance, according to the Just Laws of this Land, or dammages in case it had been taken away, or profit to any man, that could have it, not appearing to be any, neither indeed could there be to any person living: No course of Law obstructed, admitting all to be true of that Fact, which the Mayor gave in, or his Witnesses swore falsly to the Jury; the cause of Justice against an Offendor not a moment prevented; these painted Sepulchres or partial *Inquisitors* finded, or censured him an hundred pounds, although they had before convicted *S. Allenbridge*, and finded him but five Mark for being principal, (yet too much for such an offence) and *T. Rudyard* being as an accessary must be a hundred pounds, whether this be just & equal let the World be judge; and to proceed from a person (I mean the *Recorder*) who has had for many years the Reputation of honesty and justice, which its feared he carried about with him, only as that aspiring Clergy-man did his Fishing Net, which he caused to be laid aside, so soon as he had procured a *Cardinals Cap*, saying, *The Fish is caught*. And truly so may the *City of London* say of its *Recorder*, who has not since he came to be *Recorder*, manifest that candid and equal justice towards this City or Citizens in their publick concerns, as was expected, yea, little but what first passes the stamp of our Sword Aldermen, and Claffis of the City Lievtenancy; and since he by experience has found, that sowing and dedicating his Law and Endeavours to their Designs, is that which procures him the best, and most fruitful Harvest, he ever has been sedulous to plead and studdy that cause; whose Actions may be the more clearer manifested to this City and Nation, if weighed in the Ballance of Justice and Righ-teousness.

As Gods indignation rested on the Children of *Israel* till one *Achans* Thieft was discovered and punished; so this City suffers sore Judgments till it has puged it self of these many *Achan's* that

that lodge in her Bosom not only Robbing her Inhabitans of Rights their Liberties, and Properties, but also her Chamber of her Treasure, the poor Orphants Security.

Our Predecessors out of their prudence and care, that equal Justice and Right should be done to all men, by a Statute in the 18 E. 3. 3. appoint Judges an Oath, wherein is this Charge; *And that you take not by your self, or any other privily, nor apertly gift, nor reward of Gold, nor Silver, nor of any other thing that may turn to your profit, unless it be Meat or Drink, and of small value, of any man that shall have any Plea or Process hanging before you, as long as the Process shall be so hanging, nor after the same Cause.*

If the City Recorder hath forgotten this Oath, his Crimes not the less in breaking it, the Justice of it remains, and all persons in Judicature are to do *Justice* to all, and sell or deny it none; and Bribery is such a Crime that its punishable where ever its found, and its hoped Justice may reach this Recorder, if it appear that his Fingers have touched this forbidden *Babulonish Garment*. 29 c. *Magna Charta.*

But in order to Discourse of this so foul a Crime, First, See the Mark which such an Action leaves behind it, *Fortescue* cap. 51 "Bribery (saith he) is a great Misprission, when any man in "Judicial place takes any Fee, or Pension, Role, or Livery, "Gift, Reward, or Brocage of any Person, that hath to do "before him, any way, for doing his Office, or by Colour of his "Office, but of the King only, unless it be of Meat and Drink, "and that of small value, upon divers and grie-"vous Punishments. Saith *Cook*, "This Word 3 Inst. 145. "*Bribery* cometh of the *French* word *Briber*, which "signifieth *to Devour*, or *Eat greedily*, applyed to the devouring "of a Corrupt Judge, of whom the *Psalmist*, speaking in the "Person of God, saith, *Qui devorat plebem meam sicut escam panis: Qui cognoscis faciem in judicio,* Psalm 13. 4. "*non bene facit, iste pro buccella panis deserit veritatem.* Prov. 28. 21. "In the 23th year of *E.* 3. Sr. *William Thorpe*, Coo. 3 Inst. "chief Justice of the Kings Bench, for taking 145. "of four Persons 50 l. against his Oath, was try-"ed, and judged upon his acknowledging the Fol. 147. "Fact, to be Hanged &c. *Cook* further sets forth,

"That

"That this Offence of Bribery may be committed by any that "hath any Juditial Place (or Miniſterial Office) either Eccle-
"ſiaſtical or Temporal. *Non accipies perſonam nec*
Deu. 16. 19. "*munera* (and the reaſon is expreſt by the holy
"Ghoſt) *quia munera excæcant oculos ſapientium, et*
"*mutant verba juſtorum*: If Bribery hath ſo great force,
"as to blind the Eyes of the wiſe Judg, and to change the
"words of the Juſt: *Beatus ille qui excutit manus ſuas ab omni*
"*nera Judex debet habere duos Sales; ſalem ſapientiæ, ne ſit inſipidus;*
"*et ſalem conſcientiæ, ne ſit diabolus.*

"Though the Bribe be ſmall, yet the Fault is great; and
Paſ. 17 *E.* 3. "this appeareth by a Record in the reign of *E.* 3.
Coram Rege. "*Quia diverſi juſticiarij ad audiendum & terminan-*
Rot. 139. *Eſſe.* "*dum aſſignat, ceperant de* Johanis Berners, *qui in-*
Jo. Bemers "*dictatus fuit*, 41. *pro favore habendo die deliberationes*
Caſe *Rot. Pa.* "*ſua, finem fecerant domino regi per* IV. M. *Mar-*
7 *R.* 2. *num.* "*cas*: So as they paid for every pound a Thou-
12. 13. "ſand Marks See before Sr. *Wil. Thorps* Caſe,
"*Rot. Par.* 7. *R.* 2. The Chancellor was accuſed
"of a Bribe of ten Ponnds, and his man four Pounds, and cer-
"tain Fiſh, which though the things are ſmal, yet it had been
"puniſhed if it had been proved.

But now to the Fact of the City Recorder, it was obſerved, That when he gave Judgment againſt the ſeveral Convicts before related, and aſſeſſed the ſeveral Fines and Amercements upon the Convicts, and others, both for their Hats and pretended Crimes for which they were Indicted, That *John Smith*, one of the Sheriffs of *London*, being, as was ſuppoſed, over-joyed to hear of the Courts Gratitude in rewarding his pains for making Proclamations in the Streets &c. but being ſomewhat in doubt whether many of the *Fines* might not fall ſhort or prove *Bad Debts*. haſtily ſteps out of his Chair, and going to the *Recorder* ſaying, BUT HOW SHALL WE COME BY THESE FINES? To which the Recorder anſwered, GIVE ME ONE OF THEM, AND I WILL SECURE YOU ALL THE REST: At which anſwer, with a ſeeming joy and alacrity, *J. Smith* returned to his Chair, and ſpoke to ſome who were ſuppoſed his Friends, there preſent in Court,

Court, and audibly declared to them, *That the Recorder told him, That if we* (meaning the Sheriffs) *would give him one of the Fines, he would secure us all the rest of them.*

Surely this was two open and publique a place to make such Bargains as these: But what Wonder, when scarce any Passage or Action of theirs, that Sessions, was in Law and Righteousness any more justifiable: What Ratification or Confirmation of this piece of contracted Bribery has been since betwixt them in their private Chambers we know not; but what's done & acted in publique Courts we may & can assert, & declare to the World.

Some may conjecture, That the Money which *J. Howel* the Recorder afterwards received, was upon the first proposed and offered Contract, made in open Court with *Jo. Smith* the Sheriff.

Others may Imagine, That it was the Mayors Benevolence, for justifying his Dirty and Filthy Actions and Prosecutions before the People at the Sessions. But the case is this, That the *Mayor*, *Sheriffs*, *Jo. Robinson &c.* and other the Justices for that Sessions, being met together at *Guildhall* in a Court of Aldermen, proposed to pay the Recorder for his extraordinary pains, & reward him for his execution of Justice, or sitting in Judgment at the Old-Baily upon the *Quakers*: *J. Robinson* the chief of that Flock, and not the backwardest to give whats not his own, told the Court, THAT THE RECORDER DESERVED AN HUNDRED POUNDS FOR HIS SERVICE DONE AT THE OLD BAILY THE LAST SESSIONS. Whereupon the Court consented to pay him for that service an Hundred Pounds, by the Chamberlin of *London*: Who doubts of the truth hereof are desired to repair to the *Chamberlins-Office*, and they may there find the Order, bearing date the 8th of *October*, 1670. Besides other Orders for 200 l. more to him, within eight Moneths last past. An excellent way to ease that *Treasury* of being overburthened with *Orphans* Money, by which *Sinister Ends* and *Cursed Dispositions* of its *Cash*, the *Chamber* is run so deeply in Debt that its almost incredible; and here Modesty engages to conceal, being in hopes that ere long some more faithful *Stewards* and *Guardians* may be appointed to have the Charge and Wardship of it &c.

So that notwithstanding that large provision which *Englands*

Laws have made for the safety of its Inhabitants (as in chapter 29. of its *Charter* of Liberties (*Nulli vendimus &c.* on which *Cook* observes, That all the Kings People, Ecclesiastical and Temporal, Free or Bond, Old or Young, yea, although he be Outlawed or Excommunicated, or any other without exception, *is to have Justice freely without sale and fully without denial*) yet those Prisoners at the hand of this Recorder and Bench, instead of having Justice *freely*, have been apparently *sold* into the hands of their cruel Adversaries; and instead of having it *fully*, they have been unjustly *over-ruled* by their Arbitrary and Illegal Sentences and Censures against them.

Thus are we forced to cast the blame of the Prisoners Suffrings upon the Authors thereof, which we must attribute either sprung from their falsness to their trust, or their incapacity to execute that weight of Authority committed to them: and surely this Nation throughout is made sensible of nothing more, then the daily Breach of their Liberties, and of Violence to the Freedom of their Persons and Estates, by such *hostes humani generis*, as these oppressed Prisoners have had just occasion to complain of.

The Actions of that Sessions were a Riddle to the *English*-man, beyond all that this latter monstrous Age hath brought forth; its needless to repeat how much the publick Liberty (in denying the commonalty that freedom of Iurors the Law allows, fining & imprisoning Iurors for doing their duty, Imposing Fines arbitrarily without inquest upon the Freeborn men of *England*, denying to produce that *Law* which is *pretended* to have been *transgressed*) is wounded, and how much the Injuries are doubled and trebled upon their Fellow-members, and the evil consequence thereof, which if drawn into president, who can count himself free either in Person or Estate. The consequence of a wicked Sentence (said Chancellor *Bacon*) was infinitely worse then a wicked Fact, as being held a President and Pattern whereby oppression beginning upon one is extended as warrantable upon all.

And this conclusion he draweth out of this place of Scripture, *Fons turbatus & vena corrupta est justus cadens coram impio*: A just man falling into the hands of the wicked, is like a Fountain troubled with the Foot, or the Urin corrupted in the Body.

The honour of which arbitrary Sentences, Censures, and severe

were *Judgments* have ſtricken the Commonalty with Amazement, that the Courts of Iuſtice, ordained for publick preſervation and ſafety, ſhould be wreſted to enſlave, oppreſs, ruin and deſtroy us: How much that Mayor and Recorder have uſurped upon the Rights and Liberties of theſe Priſoners is too apparent in their waving the Rules of Law, and meaſuring out Iuſtice by their fantaſtical Diſcretions and Arbitrary Wills and Power, the conſequence of which cannot but be inevitably miſchievious and inconvenient to both theſe that there were cenſured, and judged evil to the People of *England*, hence was derived that excellent *Maxime*, *Melius ſub iniquiſſima lege quam ſub aequiſſimo arbitro vivere*: That is, *Its better to live under a hard and baſe known written Law, where every man may read his duty, and know his Offence and Puniſhment, than under the mildeſt Arbitrary Government, where the Subject is condemned (at the will of every Bench of Iuſtice before which he ſhall appear) without any certain or known Rules and Meaſures for the Offence and Puniſhment*: And how ſpetious ſoever the pretence for theſe proceedings may be, we know that the pretence of neceſſity (to act contrary to the known written Laws) in the Mayor, Recorder &c. or any others, is but to Uſher in Tyranny and Oppreſſion.

There appears no other end that this Bench had in this tortious ſort of proceeding, then to fill their Sheriffs *Pockets*, with extorted gain, or arbitrarily to puniſh a moſt innocent and peaceable people, to gratifie their Luſts and Malice.

And how many flouriſhing States have been ruined by the Avarices, Cruelty, and Non-obſervance of the Laws, by the Governours and Magiſtrates were tedious to inſert; only take notice what *Cook* in his 2 *Inſt.* 388. declares, *That three things overthrew the flouriſhing State of the* Roman *Empire*: *Latens odium invenile conſilium, et privatum lucrum*: And obſerves there, *That its the greateſt injuſtice, when the Innocent, under colour of Iuſtice, (whereby he ought to be protected) is oppreſſed.*

But good Government, conſiſting principally in the execution of their juſt and known Laws procures Love from the Subject; its only their Love which ſupports a State in adverſity: & our deſire that ſuch as *Londons Mayor* and *Recorder &c.* may not by their *actions* ſow a jelouſie among the freeborn people of *England*, that its the intent of our *ſupream Magiſtrates* to hold up that

common *Maxime* of all oppressing States, *That their Interest is to maintain the publique wealthy, and the particular Poor.*

Therefore permit not these persons in their Courts to creat the presidents of *Oppression* to enslave our *Posterity* in future times; to that end hath this been made publick, that the *supream Magistrate* and *Legislators* of this Nation, for the *dignity* and *honour* of their *Rule* and *Goverment*, and for the *safety of the freeborn people of this Land*, not only take care to purge the Benches of *Justice* from that *partiallity* and *corruption*, which hath usurped those places of great trust, and punish the Offenders who have been guilty of such *enormous Crimes* with condign Punishment answerable to their respective Offences and horrid Oppression, but also command the *keeping*, *observing*, and *executing* in all their *Courts* the *known*, *written*, *promulged*, *ancient*, and *fundamental Laws* of this Land; and that they may as they have often avowed, maintain the *Liberties* of the free-born people of *England*, in assuring to them that *Salus populi* is *suprema lex*. Can it be reasonably thought, that the impunity of these that have been so faithless to their *Oaths* & *Trusts* reposed in them shall ever be serviceable to this *State* or *Magistrates* under whom they act, no they'l rather take courage to betray them, when they find the first oppertunity, therefore like our old *Proverb*, *Though we love the Treason yet we hate the Traytor*: So it hath been the prudence of the wisest and best governed *States*, *Never to pardon any man for a notorious Crime committed against the Common-wealth, for any good service before done to it*: To which *Clement Edmonds* upon *Cæsars Comentaries*, well agrees, fol. 174. *It more importeth a Common-wealth to punish an ill Member then to reward a good Act*: So that *State* or *Common-wealth*, that will keep it self in good order, and free from ruin, must cherish Impeachments and Accusations of the people against those that through *ambition*, *avarice pride*, *cruelty*, *or oppression*, seek to destroy the liberty and property of the *people*, so shall they keep their *State* free from *Envie*, and secure from *supplantation*, and the free-born people of this Nation being thus *preserved* & *secured* against *Tyranny* and *Oppression*, will never seek after other Liberty, but *rejoyce* under their own *Governours*: For as it never turned to any *States* advantage to gain the peoples *hatred*, so its the most *stable lasting Government*, under which the people *rejoyce* and live *cheerfully*, according to that Maxime of *Camillus* the *Roman*, *Firmissimum imperium quo obedientes gaudent*.

An Appendix, by Way of

DIALOGUE, in a Plain and Friendly Discourse between a *Student* in the Laws and Liberties of *England*, and a true *Citizen* of *London*; whereby is shewed, That a Jury of twelve men are the only proper *Judges* of their Neighbours Actions, and may by the stablished Laws of *England* give a *Verdict* of such Facts, according to their *Consciences*, without incurring Fine and Imprisonment, &c.

Stud. WHither are you hasting out so fast this Morning my Friend?

Cit. *Truely, about some earnest business, that will not admit of delay.*

Stud. I know you to be a man of business; but in my apprehension you seem more then usually in haste, now I am come to give you a visit.

Cit. *I acknowledge your kindness, and since you are so opportunely come, I would request your advice in what I am going about.*

Stud. Yea, most freely: But what's the Case.

Cit. *I am summoned to appear to morrow, as a Jury-man, at the* Old-Baily, *but would willingly get my self excused, and was but now going out to one of the Sheriffs, my old Acquaintance, to intreat his favour, to do me that kindness; but its probable you know a nearer way to effect such a matter, and may direct me.*

Stud.

Stud. Its very like, did it much concern you, I might get your discharge: But why should not you rather serve your Country in these publique concerns? If all men were of your mind how should Right be done in Courts of Justice?

Cit. *There's many others that are better skilled in such Matters, who are more fit to perform that Office; as for my part, I have ever so loved peace that I have forborn going to Law, though it has been much to my loss.*

Stud. That's no Excuse; for the more peaceable man you have been, the more fit you are for such services: The Office of a Jury-man is conscientiously to judge his Neighbour, who needs no more Law then is easily learned to direct him therein.

Cit. *I should willingly appear, according to this Summon, but that the Mayor and Recorders carriage to Juries was such the last Sessions, that I question whether I could under-go so much Hardship, and not endanger my Life; so I find that all my Neighbours, as well as I, are endeavouring to get themselves excused.*

Stud. Then its a restraint from your Trade that deters you?

Cit. *No truly, thats not all; but to be kept without Meat and Drink two Dayes and Nights together, and not to be allowed the priviledge of Natures Easement; and after all, to be cast into* New-Gate, *is hard Service.*

Stud. I must confess this was very hard, yet it should not deter you from doing your duty: and if those Jurors suffered unjustly (which I Question not) their Service was the easier to them.

Cit. *I am of opinion they were unjustly dealt withal; many of them I know, who had the repute of honesty, especially those four who yet lie in Durance; but I may suffer by reason of my Ignorance of the Duty and Office of a Jury-man; therefore on that account principally I desire to be excused my appearance, which if I understood as well as many do, withal my heart I would do my service.*

Stud. Now you speak honestly like an English-man, and in case that be all your cause of scruple, it may soon be removed if you will take my Advice.

Cit. *Yes with all my heart: Then pray let me have your Answer to some Questions, which often of late I have had upon my thoughts to propound to you, or some Practitioner of the Law, that would be plain with me.*

Stud.

Stud. Offer what you think meet, and I will endeavour to give you that satisfaction you desire.

Cit. *Since Jurors are thus of late Menaced, Threatned, Fined, and Imprisoned, by our Recorder at the Old-Baily; pray wherein lies their Priviledge or Safety? What say the Fundamental Laws of* England *to such Practices?*

Stud. The Jurors Priviledges, and every *English-mans* by them, as they are very Considerable, so the Laws have very well Guarded them against Usurpation, as I shall shew you.

Cit. *But pray first let me know their Antiquity? I have heard it said, That Tryals by Juries have been of long standing in this Nation.*

Stud. Their Antiquity no one knows, but all Authors agree that they have been very ancient: *Cook* the Oracle of our English Laws, writes, That long before the Conquest it was ordered, That in every Century there should be twelve good and honest men to judge &c. And *Cambden* in his *Britania* correcteth *Pollidor Virgill*, for saying *William* the Conquerer first brought in this way of Tryal, affirming that it was most certain and apparent by the Laws of *Etheldred*, that such Tryals were in use many years before: Which *Horn* in his Mirror of Justice, written in the time of E. 1. doth well confirm and assure us. *Co.* 1 *Inst.* 155.

Cit. *But what say the Law-Books of later date, and our Predecessors in later years about them.*

Stud. When the great Charter of our English Liberties in the 9th year of *H.* 3. was made, and put under the great Seal of *England*, then were these Tryals by Juries confirmed down to us, and therein it was stablished, That no Amercments should be assessed upon any man but by the Oaths of good and lawful men of the Vicinage: And also that no Free-man of *England* should be imprisoned in his Person, or destroyed in his Estate and Liberties, without the Lawful Judgment of his Equals, which Charter has been confirmed by thirty two Parliaments, and now stands firm to justifie and maintain the freedom of this sort of Tryals, which *Cook* calls the 9 *H.* 3. 14. 29. *Co.* 2 *Inst.* 41.

Sub-

Subjects Birthright: And which I must say is the only Preserver of our Lives, Freedom, and Property, as you may read the Book of the Tryal of *W. P.* and *W. M.* last Sessions.

Cit. *I am very well Satisfied in this point; but pray, what says the Law about menacing, threatning, fining and imprisoning of Jurors, as before I mentioned to you?*

Stud. As to the menacing and threatning language which that Bench gave the Jurors, it only evidenced and manifested to the world their Envy and Malice against the Prisoners, that the Jury had in charge, and so may be said also of their fining and imprisoning of the Jury afterwards.

Cit. *Hath a Court then no power by the Law to fine and imprison a Jury?*

Stud. We find in our Law Books, or Books of Cases, that Jurors have been fined by a Court, for these following matters.

39 *Ass.* 19. *Fitz. Exam.* 17. 14 *H.* 7. 30. 36 *H.* 6. 27 *per Cur. C. B. & B. R.*

1. If a Jury man take money (from the party to be tryed) before, or after he be sworn.

2. If they receive any Writings from the persons they have in trial.

3. If a Jury man appear, and then depart before he be sworn, is a contempt of the Court.

34 *E.* 3. *Fitz. Office de Court* 12.

4. If a Juror, after he shall be sworn, depart from his Fellows before they deliver in their Verdict.

40 *Ass. pl.* 10.

5. If Eleven Jurors shall give in their Verdict without, or against the consent of the Twelfth.

Dyer 37. *b.* 218. *a. b. Old Entries* 251.

6. If a Jury eat or drink after they are gone from the Bar, and before they bring in their Verdict (This I suppose is meant where the Court will accept of the Verdict, when the Jurors tender it.) And for such like Misdemenors as these they have been Fined and Imprisoned, but how Warrantable, is a *Query*.

Cit. *As for these Miscarriages you have instanced, it seems reasonable they should be punished, which no honest man will be found guilty of; neither do I fear to suffer for such like misdemeanors. But what say you to the fining a Jury for giving in a Verdict according to their Consciences, yet pretended by the Court to be contrary to Evidence.*

Stud.

Stud. To fine them at all is an abuse, though it has been long practised; but to fine them for giving their Verdict according to their Conscience, such practises are very much against Law and Reason too: For a Jury of twelve men are by the Laws the only proper Judges of matter in issue before them, as for instance. *Co. 4. Inst. 84.*

1 That Evidence which is delivered to induce a Jury to believe or not to believe the matter of Fact in issue; its called Evidence, because the Jury may out of many matters of Fact (*evidere veritatem*) that is so clearly the truth, of which they are proper Judges.

2d When any Matter is sworn, Deed read, or offered, whether it shall be believed or not, or whether it be true or false in point of Fact, the Jurors are the proper Judges.

3d Whether such men met together intentionally to do such an Act or not, the Jurors are Judges, for the Court is not Judge of these matters, which are Evidence, to prove or disprove the thing in issue.

Cit. *What then is the Court to take consisance of in the Tryals of mens Liberties and Properties.*

Stud. The Court (as their duty is, are to do equal Justice and Right) so they) in such Tryals do direct, whether such matter shall be admitted to be given in Evidence or not, such a Writing read or not, or such a man to be admitted a Witness or not; and this belongs to the Judgment of the Court, as they are upon their Oaths to see Justice done twixt party and party: Therefore has the Common Law ordained, That matters of Fact (which are drawn to an issue) shall be tryed by Jurors, and matters of Law (upon a Demurrer & special Verdict &c.) by the Justices, according to that Rule, or Maxime of *Sr. Edw. Cook, Ad Questionem facti non respondent Judices, ita ad questionem legis non respondent Juratores:* 11 Co. 10. 4 Inst. 84. 4 Inst. 207. The Justices meddle not with matter of Fact, nor Jurors with matter of Law. So its the Jurors Office to find (*veritatem Facti*) the truth of the Fact in issue, and the Court to give Judgment accordingly: By which we may see the Wisdom of the Law, in referring things to persons, in which they have consulance and are most expert, according to that Maxime, *Quod quisq; norit, in hoc se exerceat.* 5 Coke 13.

Cit. *According to this Account you have given me of the Duty and Office, as well of the Court, as the Jurors; the Law seems to have dealt justly and equally betwixt them both. But one Question further; pray whence is it that Jurors are summoned of their Neighbourhood, where the Fact is supposed to be done or acted.*

Stud. As the Common Law of this Land is nothing else then Common Right, pure and tryed reason, so it never failes to render a Reason of its own Actions; a *Jury* is therefore summoned of the Vicinage, because its alwayes presumed that the Neighbourhood are best acquainted with the persons inhabiting, or the Actions and Facts, done or acted within their own Limits and Jurisdiction: And that they themselves may know something of the matter in controversie, being (*de Vicineto*) of the Vicinage where such matter was in action. Therefore the *Jury* must be returned, *de vicineto*, of the place where the Fact was done, and of men (*per quos rei veritas melius scire poterit*) by whom the truth of the matter may be better known; so the *Jury* having some self-knowledge of the matters afore-hand; besides, hearing the Evidence, may the better pronounce (*veritatis dictum*) or a just Verdict of the Fact.

Cit. *But Wherein do you conceive a Jury-man may have self-knowledge of matter that may not as fully be evidenced by Witness?*

Stud. Its probable, First, That they may know the Witness on the one side, or the other, to be persons of no Credit; or,

Secondly, They may know the Party accused to be a man otherwise qualified or princip'd, then to do such an act or thing, that is charged against him; as for instance, They may know a man to be,

1. A Quiet Peaceable *Quaker*; therefore no Fighter or Rioter or Routous Person.

2. A *Protestant* of the *Episcopal* Church of *England*; therefore no House-Preacher.

3. An honest sober man amongst his Neighbours; therefore probably no Thief or Robber: And many other Instances might be offered to this purpose.

Cit. *To give a Jury then for things, which probably they may know of their own knowledge, to be true, or false, seems very hard; and sure ly*

our Jurors of London *have met with hard usage, to be fined and imprisoned for doing their duty, in what the Laws of this Land have made them sole and proper Judges.*

Stud. Their hard usage and severity to the Jurors is not so much as the ill consequence, that such practices will be to every English-man, and their Posterity, if not timely Remedied.

Cit. *Truly the Citizens of* London, *in general, have much dreaded the late procedure at the* Old-Baily, *and fear its a Fore-runner of much Mischief, that may be acted in the Country, who generally take* London *for a President in their Courts of Justice: But pray what's your Thoughts about these things?*

Stud. The consequence of such Practices, the Parliament have very well set forth in Chief Justice *Keeling*'s Case, 11 *Dec.* 1667. when they Voted, That fining Juries were not only Innovations, in the Tryals of men for their Lives and Liberties, but that it was of Dangerous Consequence to the Lives and Liberties of the People of *England*, and tended to the introducing of an Arbitrary Government: And their reason was very good, for the King sits not in Judgment upon his Subjects, but by his Justices in his Courts; and if the Justices, who are commanded to be guided by the Law, shall contrary unto the Law fine and imprison Juries, for giving Verdicts in such matters which the Laws allow and appoint them to be proper Judges of: Where then is the English-man tryed by his Peers, and by the Law of the Land? To deny us this free Tryal, is to Rifle us of our Birth-right, and most Arbitrarily and Tyrannically to deny us Equal, Law, Justice, and Right. St. 3. 13 *E.* 3.

Cit. *Surely when the Parliament meets again they will call these illegal Proceedings of that Bench to Question before them, as well as they did* Keeling's?

Stud. It as much concerns them, in behalf of themselves and Posterity, as any of us, to curb these subordinate Judges, who have broken both their Oaths and the Law, to run into those Arbitrary and Illegal Practices, the consequence of which, if suffered, in a short time will be, *Sic volo, sic jubeo, sit pro ratione voluntas*: And it will necessarily follow, That,

1st Every Justice of Peace, Mayor, Bailiffs of Corporations, Stewards of Leets &c. what ever matters are tried before them, shall have Verdicts to their minds, or Fine and Imprison the Jurors till they have: So that such must be either pleased, humored, or gratified, else no Justice or Right to be had before them in their Courts.

2d A further ill-consequence will be, That although a person may challenge a Jury-man, or Sheriff, if they be of Kin to this Adversary, yet he cannot challenge a Justice, Mayor &c. who will impose a Verdict for their Kinsman, or Fine and Imprison them till they have, so that by this means our Lives, Liberties, and Properties shall be solely tryed, and wholly at the Will, and in the power of every mercenary or corrupted Justice, Mayor, Recorder, Bailiff &c.

Cit. *But has it been practicable in former times to fine and imprison Juries, for finding contrary to Evidence, as the Recorder pretends our Jurors have done?*

Stud. No surely, we find not one President in all our Books, till *Keeling*'s, and he scaping that condign Punishment, which the Parliament promised him, your Recorder and Mayor has trod his Steps. And pray see how such Judgments on Jurors leave them remedilesse of relief, which is sufficient ground to conclude such practices to be against the Law.

First, It can never be tryed whether they found with or against their Evidence, by reason no Writ of Error lies in the Case.

Secondly, They are in worse condition then the Criminals, that are tryed by them; for in all civil Actions, Informations, & Indictments, Appeals and Writs of Error, do lie into superior Courts, to try their regular proceedings of the Inferior, but here can be none.

Thirdly, In the way of an Attaint, the Truth or Falshood of a Jurors Verdict, in matters of Fact, may be tryed by another Jury; but in this case the Jurors are concluded, by reason that whether they have found with or against, their Evidence can never be tryed. *Litt. Sect.* 108.

F.N.B. 21. And further Reason (which is Law) tells us, That as the Kings Justices of the Law have given out, that they

they ought not to have any Action brought against them, if they shall in any thing err or mistake the Co. 2 Inst. Law: So much the more twelve Jurors, who are 422.
Judges of all matters in issue before them, agreeing together in one, ought not to be fined, where they find a Verdict according to their Consciences, albeit, the Evidence may seem strong and clear to another person, to the contrary of which the Jury have found: For they may (being (de Vicineto) where the Fact was done) know something of their own knowledge of the matter of Fact before them, which the Judge or Standers by, are probably Strangers unto, and ignorant of it. Therefore the Knowledge of twelve men, agreeing together, ought to be preferred before the single Apprehension of any one Person whatsoever: All which does manifest, not only the Illegal and Arbitrary Proceedings of your Mayor and Recorder, against those twelve men, but the Ill and Dangerous Consequence of such Practices to all the People of *England*.

Cit. *But its pretended, That one of the Crimes charged upon the Jurors (by the Recorder) was for finding their Verdict against Law. How can the Jury justifie such an Action? Sure they are not (as it is said) Judges of Law, but Fact.*

Stud. Admitting they are so, which will not be granted yet, That a Jury can find against Law, is to me a *Paradox*; for as we say, Where there is no Law, there is no Transgression; so where there is no Transgression, there is no place for Law, the Law being made for the Transgressor, And said Learned *Cook* (*Ex facto jus oritur*) upon stating the Fact, or transgression, Law doth arise, yea, the Law doth grow out of the Root of the Fact: Therefore its one of their adjudged Cases, That if a Jury find a matter of Fact, but conclude against the Law, the conclusion is void, and the Court ought to give Judgment according to Law. 4 *C.* 42. *b.* 53. *b.* 11 *Coo.* 10. *b.* *in Pinddle & Nappers* Case.

Now the Jury being the sole Judges of Fact, and matter in issue before them, not finding the Fact on which the Law should arise, cannot be said to find against the Law, which is no other

then

then a superstructure of Fact. Then to say they have found against the Law, when no fact is found, is most impossible.

Cit. *You have given me very good satisfaction as to the unreasonableness and illegality of that Courts procedure; and since I see the Law has made so good provision for our safety, I purpose to appear upon the Jury, according to my Summons, but desire withal a little of your Direction about my Office of a Jury-man?*

Stud. I am very confident, that you would not willingly violate an Oath, which you take, but that there are such, who as frequently break them, as take them, is too too much apparent, through their careless custom on the one hand, or slavish fear on the other, against which I would fully caution you, that you may defend your self against those Enemies of your Countries Peace, and keep a good Conscience towards God and man.

First, The Oath thats administred to you, at the Sessions, is, That you shall well and truly try, and true deliverance make, between our Soveraign Lord the King, and the Prisoners at the Bar, according to your Evidence. Then is the Indictment read against the Prisoner, either for his Life or Liberties, which probably takes up a large time in debate, and in examining Witnesses on both sides, according as the Case may be. And when the Jurors are commanded to withdraw, that they may consult of their Verdict; they soon forget that solemn Oath they took, or that great charge of the Life and Liberty of men, whereof they are made Judges; and without one serious thought, or consulted reason offered, (*pro* or *con*) presently go to holding up of hands, or some other way, voting whether to find for Prosecutor or Prisoner; so the Major votes of such shall dispose of mens Lives, Liberties, and Properties, which the Law counts so dear to every man: This practice is too customary among Jurors, as I'm credibly informed, which occasions their dispatch of that business in a quarter of an hour, which held the Court full six hours debate: witness that second Jury, that were sworn on the Prisoners last Sessions, and tryed *T. R. F. M. &c.* Therefore have a care of such Fellow-Jurors.

Secondly, Such a slavish Fear attends many Jurors, that let the Court direct to find Guilty, or not Guilty, accordingly they

they bring in their Verdict, and therefore many of them never regard, what the Evidence was more or less to prove the Indictment, but as the Court sums it up, they bring in; as if Jurors were appointed for no other purpose, but to echo back to the Court (as one observed) what the Bench would have done Illegally and Arbitrarily acted upon such persons, against whom they themselves Prosecute and Inform: Now against those Companions I caution you to beware of.

Cit. *I am very well satisfied that these Practices are too frequent amongst Jurors, of which I have been Witness: But pray what is the Reason that the Mayor turns Informer, and forceth his Officers and Servant to prosecute?*

Stud. You Citizens should best know the reason of your Magistrates Actions. But its most probable, that your Mayor turns Informer to get Money into the Sheriffs Pockets, who have purchased all the fines from the King, which the last Sessions amounted to no less then 500 l.

Cit. *Its too apparent they are Confederated; I have heard a murtering, that they together have licked their Fingers of* 500 l. *and more of* Cripple-Gate-*Ward Money; I can give no certain account of the business; but the Hugh and Cry is gone out, and its like in a little time the Malefactors may be apprehended: And since* London *was incorporated. I believe it never had such a pack of Knights to govern it: But to our business, Let us have some further direction?*

Stud. My Advice to you is, That those things in issue, whereof you are proper Judges, you still remember, as I instanced before, *Ad quæstionem facti non respondent Judices)* If any injustice be done by the Court to a Prisoner, by reason of their negligence or carelesness, that injustice will lie at your door: *Qui non malum prohibet cum potest facit*: He that prevents not an Evil, when it is in his power, does it. Therefore remember, as you of the Jury are Judges of the matters of Fact in issue (that is) Whether a thing sworn is to be believed, or not? Whether any thing offered be true, or false? Whether men met together to do such an Act against the Law, or not; in Manner and Form as the person is Indicted? You are conscientiously to look to. Therefore,

First, Observe well the Indictment that is read, and the several Parts thereof, both as to the Matter, Manner, and Form.

Secondly, Take due notice and regard to the Evidence offered for Proof of the Indictment, and each part of it; as well to manner and form as matter, which endeavour to write down, or so much thereof as you are able; and weighing them seriously together you may give a Verdict upon that joyned issue, according to truth, which is called by *Cook* (*veritatis dictum*) The Saying of Truth.

And observe, That as you are sworn to try and deliver according to Evidence; so also you deliver in your Verdict, That the person, you have had in Tryal, is guilty in Manner and Form, as the party stands indicted, which thing you should very well weigh; and though a person be proved to be guilty of some Fact or Misdemeanour, yet, if it be not also proved to be done in such Manner and Form, as the party stands indicted, he is not Guilty, and ought to be acquitted by you.

Cit. *But is not there both Law and Fact in an Indictment, as those against* W. P. *and* W. M. *and the rest of the* Quakers *last Sessions? And how shall a Jury deal in such Cases?*

Stud. If matter of Law do, or shall arise, and mingle it self with the Fact, the Jury are not compellable to finde the Law, but only the Fact, if they will, according to the Statute of *Westm.* cap. 30. the second, which declareth, That, *Justiciarii ad Assisas capiendas assignati non compellant Juratores dicere precise si sit disseisina vel non &c.* Justices of Assize shall not compel Jurors to say precisely, that is, to determine a matter in Law: And *Cook* commenting upon this Statute puts a Question, whether in all Actions a Jury might give a special Verdict. "In the end (saith he) it "hath been resolved, that in all Actions, real, personal and mixt, "and upon all Issues joyned, general and special, the Jury might "find the special matter of Fact pertinent, and tending only "to the Issue joyned, and thereupon pray the discretion of the "Court for the Law: and this the Jurors may do at the Common Law, not only in Cases between Party and Party; but also in

Cook 2 Inst. 425.

in Pleas of the Crown at the Kings Suit. And if Jurors be not Judges of Law, but Fact, as our Sophisters in Law would have it; then the Jury may give in the matter of Fact, and leave the matters of Law to the Court: Which special Verdict (*Cook* says) the Court cannot refuse, it being pertinent to the matter in Issue: So according to their distinction of Law and Fact, the Jury is not bound to give in upon their Oaths, that men did meet or assemble themselves together unlawfully, but only to find that they did meet & assemble themselves together, and let the Court judge of the Lawfulness or Unlawfulness of it; for *Ex facto* (says Cook) *jus oritur*. Therefore upon an Indictment for Murder (*Quod felonice percussit*) That he feloniously struck him, the Jury finding (*percussit tantum*) Only that he struct him, the Verdict was adjudged good &c.

Cook 1 *Inst.* 92.

Pla. Cor. 92.

Lib. 9. 12.

Lib. 9. 69.

Cit. *What's the Reason then, that the Court will not accept of such special Verdicts, but frequently turn the Jury back, till they bring in general?*

Stud. Because then they have your Oaths as well for Law as Fact, and if the Judgments be severe, it shall lie at your door.

Cit. *But we are not Judges of Law, as they say; Wherefore then should they have our Oaths for the Law?*

Stud. This is an Artifice, whereby they cheat the Jury into frequent Perjury, as I shall at large plainly shew you. As,

1st Observe the Form wherein they draw up their Indictments, that is subtil to place a small matter of Fact, as they call it, in the midst of a whole Set of their Decriminating and Obnexious Termes, which they call Law, that deserve severe Punishments where ever they are found, viz. *To do an Act with Force and Arms, Riotously, Romously, Tumultuously, Seditiously, Illegally, Deceitfully, Subtilly, Felatiously, in contempt of the King, and his Laws, to the Disturbance and Affrighting the Kings Liege People, to the evil Example of others, against the Kings Peace, his Crown, and Dignity,* and such like.

2d The Fact in issue, pretendeded to be committed, although it be never so Innocent or Lawful, (as standing in the Street, or High way, in peaceable Manner, or Assembling in their own

House, there perswading the people to turn from the evil of their ways, as *Drunkenness, Whoredom, Swearing &c.*) they environ with many of those foul Criminations, thereby to misrepresent the Fact, or Matter in issue, to the Jury, like as the Inquisitors in *Spain* (so much applauded by *J. H.* your *Recorder*) do cloath those Innocent Christian *Protestants* (whom they have Censured to the Faggot) with their *Sambenitoes*, that the people beholding them in so Dismal and Hellish a Dress, may be so far from pitying them, that they may rather condemn them in their very Thoughts as Miscreants, not worthy to live.

Garments on which are painted the shapes of Devils, and infernal Spirits &c.

Against any of which Criminal Terms, if the Jurors object, by reason the Evidence did not reach them; the Court presently stops their Mouthes with saying, *You have nothing to do with that, its only matter of Form, or matter of Law, you are only to examine the Fact*: Which the ignorant Jurors taking for Answer, bring in the Prisoners Guilty (as they suppose) of the Fact or Trespass onely; but the Clark of the Peace recording it, demands a further confirmation (saying thus). *Well then you say A. B. is guilty of the Fact or Trespass, in Manner and Form as he stands Inditted, and so you say all?* To which the Fore-man answers for himself and Fellows, *Yes.*

Whereupon the Verdict is drawn up (*Juratores super sacramentum suum dicunt*) That the Jurors do say upon their Oaths, *That A. B. did, or committed such a Fact, with Force and Arms—did such a Seditious Action—did meet such persons in a Riotous, Routous manner—did such an Act Deceitfully, Subtilly, Illegally, Fallatiously, in Contempt of the King and his Laws, to disturb or affright the Kings Liege People, against the Kings Peace, his Crown, and Dignity*: So the Jurors are ignorantly and fallatiously perjured upon Record, and Oppression thereby is Acted upon the Innocent; so by reason of the Courts subtilty on the one hand, and the Juries ignorance on the other; they upon their Oaths having cloathed the Innocent Matter or Fact in issue with the *Sambenitish* Garment, the Court with safety passes most severe Judgments & Censures upon such Prisoners, & all because the Jury have upon their Oaths (as was said before) made that innocent Action, or pretended Fact, Criminal,

which

which the Law or Court never could have done, had not they in such manner given a Verdict, so many degrees worse then the Fact in issue, was evidenced unto them.

Cit. *Then I perceive these subtil Fellows make use of our Oaths, (as it's fabled of the Monkey, Did by the Cats Foot to draw the Chesnuts out of the Fire) and so thereby cover their cursed Ends and Designs upon the Innocent, whom they daily Prosecute; as for my part, I never heard of so much of their Knavery before, neither did I think that it was possible that so much Villany should have been Acted under colour of Justice.*

Stud. Sr. *John Hemel* your Recorder, and your City Magistrates, have a further artifice, that is, To indict all men by the Common Law, and wave intermeddling with any of the Statutes in force against such misdemeanours, as they pretend the persons indicted are guilty of.

Cit. *Pray what do you suppose their drift is in that?*

Stud. No other then that they may as well make the Law, as Proportion the Punishment; for when an Indictment is grounded on the Common Law, and the Prisoner desires to have the Law read to the Jury (who are his Judges, whether he be guilty, or not guilty (*Modo & Forma*) of the matter in issue) on which such Indictment is grounded, the Court answers, *Its* (Lex non scripta) *a Law not written, therefore not to be produced*: By this means the Prisoner is incapacitated to make his defence, and the Jury kept ignorant, whether the Offence charged to be done by the Prisoner, be Innocency or Guilt: And so the Bench at the *Old-Bailey* acted last Sessions, in the Case of Riots, Routs, and unlawful Assemblies; and although there be several Statutes in force, which point out the persons that ought to be apprehended and punished, as Rioters and Routers, as the Statute of 17 *R.* 2. 8. 13 *H.* 4. 7. 2 *H.* 5. 8. with others, yet your Recorder and Magistrates pretending to proceed by the Common Law (*non scripta*) apprehended quiet and peaceable Religious Assemblies, as Riots and Routs, and punished them as such, the greatest abuse to the Common Law, as has been done in any age, by such who pretend to sit upon a Bench of Justice.

And after the rate of their Proceedings, by their abuse of the Law, they might have framed an Indictment against a man, for

(*vi & armis*) eating Meat at his own Table with his Wife and Children, and at last ushering in the Fact committed, with these obnoxious Tearms, as, *Against the King and his Laws, Illegally, and in contempt of his Crown and Dignity &c.* And a Jury of their packing would have found them guilty (*Modo & Forma.*) Therefore it concerns you to have great care and regard to the Charge you undertake, which is, Well and truly to try, and true deliverance make, according to what is evidenced to your Conscience.

Cit. *But what's the Reason that Indictments, and all the Proceedings of the Sessions, be drawn and entred in Latine, a Language which few, either Jurors or Prisoners understand.*

Stud. Its such a Practice, that no Reason can be given for it, except to keep the People ignorant, especially the Grand Inquests who first pass the Bills of Indictment; who being generally unknowing in such Language, may perjure themselves blindfold, being only informed or made to understand (so much of what they swear to) as a mercenary Clark will read to them, or let them know, which besure shall be no more then whats for the interest of the Prosecutors, and the Prisoners disadvantage. And if these twelve men (who by the Law are uncontroulable Judges) shall not bring in, or return, *Billa vera*, to such Indictments as the Bench shall favour, your Mayor and Recorder, after Iustice *Keeling's* Example, do frequently command them back, till they find those Bills according to their direction, which great abuse of the Law, as *Horn* calls it, is not only one of the greatest Violences that is offered to our Lives and Liberties, but also expresly against the very Oath that those Justices take for the execution of that place of Trust, (which saith) *Ye shall do even Law and Execution of Right to all, Rich and Poor, without having regard to any person; and that ye give none Advice, nor Counsel to no man, great nor small, in no Case, where the King is party.*

Mor. Justice cap. 5. Sect. 1. 134.

18 Edw. 3. 3.

Cit. *How comes it to pass, that these Judges (who so violate their Oaths, oppress the People, so illegally censure the Innocent, and condemn the Just) escape condign punishment (in all Ages) which is a due reward for their Oppression and Injustice.*

Stud. To call them Judges is a Title beyond their Place or Commission, They are stiled Iustices, according to their Office, which is to see Iustice done betwixt party and party, not to fine and imprison persons at their will and pleasure without a Iury; which practice of theirs is no more legal then evil Custom can make it, which practice *A. Horn* in his *Mirror of Iustice*, reckons amongst the Abuses of the Law, they having no other Law, Ground, or Authority for it, then some former Uses or rather Abuses acted by their Predecessors; and by the same rule, in case the Iurors bring their *habeas Corpus* for relief, the *Recorder* or his Council may offer *Keelings* fining of the Iury, although condemned in Parliament, to justifie this latter piece of Injustice: After which rate a Thief or a Robber may legally justifie his Actions, because of his long Use, Custom, and frequent Practice; which abuses the Iustices at *Westminster*, rarely dare or will punish, by reason (such crimes advancing prerogative) it may occasion a Frown or Rebuke from one or other *Superior*, forgetting, or else neglecting that obligation that lies upon them, *To deny no man Common Right by the Kings Letters, nor none other mans, nor for none other cause. Nor delay Iustice or Right to any man, according to the Charter of Liberties.* And although many corrupt and faithless Executioners of Iustice have escaped their due Reward in all Ages, yet there are some, who have received their Portion; as *Lambert* in the Translation of his *Saxon* Laws, reports, *That King* Alfred, *the famous Compiler of our English Laws, executed many such*: Of which *Andrew Horn*, a worthy Authour (in his *Mirror of Iustice*, written in the time of *Edw.* 1. cap. 5. sect. 1. among the many Violences and Abuses offered, to the Common Law (i. e. *The Common Right of the People*) of England) gives a punctual account, saying, *It was an abuse of Iustices and their Officers (who kill people by false Iudgment) were not destroyed as other Murderers, which King* ALFRED *caused to be done, who caused Forty Four Iustices, in one year, to be* HANGED *as Murderers, for their false Iudgments.* Amongst which says the Author,

He Hanged Cadwine, *because that he judged* Hackwy *to death with-*

Cook 2 Inst. 26.

5 *chap*, 1. *Sect. numb.* 32 & 33.

Stat. 18 *E.* 3. 3.

9 H. 3. 29.

out the consent of all the Jurors: And whereas he stood upon his Jury of twelve men, because part of them would have saved him; Cadwine, (like your Recorder) *removed those, and put others on the Jury, against* Hackwy's *consent*.

So observe, Its said without the *consent* of his *Jurors*, though twelve men had given a Verdict against him; for those who were put upon him against his *consent*, were not his *Jurors*, by reason all or any of those, who were first sworn to try him, could not (by the Law) be removed, and others put in their rooms. This is a Case (save only in the punishment of the Justices) parralel to that of your Mayor and Recorder at the *Old-Baily London*, 5 *Sept.* 1670. who when one Jury of twelve men were sworn to try several persons called *Quakers*, and the Prisoners had accepted of them; they (*Cadwine like*) removed the first Jury, and forced other Jurors upon them, against their *consent*, and by that means condemned them (*like Hackwy*) without the *consent* of their *Jurors*.

He Hanged Seafoul, *because he judged* Ording *to Death for not Answering*.

So it was *Murder* in a *Justice* to condemn a *Person*, before a Jury had *tryed* the Fact, which in this case they could not do, the Prisoner not pleading to the Indictment.

He Hanged Freburn *because he judged* Harpyn *to dye, when as the Jury were in doubt of their Verdict*, (and the reason is given) *because in doubtful Cases one ought rather to Save then Condemn*.

Here's not only a Maxime (for Jurors & Justices) *Rather* (in doubtful Cases) *to Save then Condemn*, but a seasonable Caution to *Justices* of *Assize* and *Sessions*, who not only when a Jury are *doubtful*, but when they are *agreed* to acquit, will menace and threaten them with Fines and Imprisonment, until they bring in a Verdict against a Prisoner, upon whom they purpose to pass a *Freburn's Judgment*.

He Hanged Hale *because he saved* Tristram *the Sheriff from death, who took to the Kings use from another, Goods against his will, for as much as any such, Takingar Robbery, hath no difference*.

He Hanged Arnold *because he saved* Boyliffe, *who robbed the people by colour of Distresses, whereof some were by selling Distresses, and some by extortion of Fines; as if by extortion of Fines, releasing of tortious Distresses (for under selling such Distresses) and Robery there were difference*.

How

How many *Burglaries*, *Thefts*, and *Robberies*, are daily committed by the Miscreants of our Age, under the names of Informers, and other the Kings Officers (like *Trifilian* the Sheriff) by *taking away Goods*, against the *will* of the Owner, to the Kings use (as they pretended) and by colour of Distresses, and selling and releasing *Distresses*, and extortion of illegal imposed Fines, against the Fundamental Laws, upon *Englands Quiet*, *Peaceable*, and *Religious*, yet *Oppressed and Abused Inhabitants*; and the *Justices* of the Peace, not only like *Hale* and *Arnold*, *save* and secure them from condign punishment, but abet and encourage them to such sore and grievous Oppressions, yet no relief upon the Oppressors complaint, nor redress, for these publick *Grievances*.

He Hanged Oskitell *because he judged* Cathing *to death by record of a Coroner, without tryal of the Truth of the Fact by the Jury*: So zealous was this King for the *execution* of *Justice*, and tender of the Lives of his *Subjects*, *That* (as says the same Author) *he hanged all the Judges, who had falsly Saved a man Guilty of Death, or had falsly Hanged any man against Law, or any reasonable Exception.*

And in *lesser Offences*, where *they* wrongfully *grieved* any man, or passed the *bounds* of their *Commission*, or *the Law*, he *disinherited* and *removed* them, to the *satisfaction* of the people, *stablishing* of sure upright *Laws*, *maintenance* of the honour of his *Courts* of *Justice*, *and his perpetual Renown and Fame* to future Ages and Generations.

Besides, *Hubert de Burgo* in the 17 year of *E.* 3. ——*Spencers*, Father and Son: *Trisilian* and *Belknap*: Sr. *William Thorpe* in 23 *E.* 3. *Empson* and *Dudley*, persons most famous for Tyranny and Oppression, left upon record, that our Justices of later date, beholding their ends, should avoid their Foot-steps. So although some of your Fellow Citizens, by reason of this Injustice and Oppression, of your Citty Recorder, Mayor &c. have undergone the hardship of Imprisonment (yet they standing in the gap against the introducing of an *Arbitrary Government*) they may live to see a due reward rendre to their Oppressions, and enjoy the fruit of their faithfulness to the trust reposed in them, that is, Liberty and Freedom from Tyranny & Oppression, then, as says the Wise-man, *Prov.* 21. 18. *The Wicked shall be a ransom for the Righteous, and the Transgressor for the Upright.*

Co. 3 *Inst.* 145.

Votes Parl. 11. *Decem.* 1667.

Cit.

Cit. *Well, I acknowledge you have given me ample Satisfaction as to what is the Jurors Duty, and since I see, That the* English-*mans Life, Freedom, and Property, principally depends on the faithfulness and honesty of his Jurors; I shall endeavour to perform my Duty in that Office; and what my Assistance may avail to defend us against that Torrent of Violence, Usurpation, and Oppression (which is overflowing all our Liberties) shall be freely tendred and given up for the good of this City and my Native Country.*

Stud. Now (*my Friend*) you speak like an English-man, and as one that would faithfully serve your Country; and if you will take my advise, at leasure hours read your *Charter of Liberties*, and the *Fundamental Laws* (*By which* (as *Cook* says) *you have a better Inheritance then by your natural Parents*) some of the most impartial Writers have been the said Sr. *Ed. Cook* in his 2d, 3d, and 4th Institutes; *Horn's Mirror of Justice*; *Lambert's Translation of the Saxon Laws*; as also, *The Tryal of W. P. and* W. M. lately printed; they are Books without difficulty to be had, and very worthy your perusual; wherein you may not onely see the English-mans Rights and Liberties asserted, but Tyranny and Oppression in all Ages (endeavouring to exterpate and violate our Laws, the equal Distributer of every mans Property) detected and laid open. These I would not have one true English-man want in his House, the consulting with which at vacant hours, will so accommodate and furnish him with the knowledge and understanding of his own inherent Rights and Liberties, that he may be able to defend (not only himself) from Violence and Oppression, but also his Neighbours from Tort and Wrong.

Pro. 29. 7. Cognoscit justus causam tenuium, improbus non animadvertit ut cognoscat. The right hand considereth the cause of the poor; but the wicked regardeth not to know it.

A Postscript.

A Postscript.

THIS impartial Accompt of these persons Tryals, with the Appendix of the Jury-mans Duty and Rights, had been earlier presented to thy view, but that the difficulty of a Printing-Press is such (by reason of their frequent Searching and Examination) that its no easie matter to bring forth Truth to Light without Hazard: As the Author hath on the one hand, avoided the Censure of a flattering Hypocrite (that with his Mouth destroyeth his Neighbour) so on the other hand, the *Lash* of the Wise Man, *Pro.* 24. 24. *He that saith unto the Wicked, Thou art Righteous, him shall the People Curse, Nations shall Abhor him.*

What Violences and Oppressions may at the rate of that Courts proceedings (against these Prisoners) be committed not only upon the Cittizens of *London*, but upon every Free-man of *England*, are apparent to the Judicious.

Have not such Arbitrary and Illegal Proceedings upon Jurors (the Staff of the *English-man's* Liberty) been condemned by the Commons of *England*, in Parliament, and declared, *That they were of evil Consequence to the Lives and Liberties of the People*, (which thing these Prisoners have sadly experienced) *and that they tended to the Introducing of an Arbitrary Government.* Which no Sober Man questions, yet no sufficient caution to that Court.

O Wicked Times! O Miserable Age! What, Injustice avowed, Oppression become familiar, yea Legal; Oaths of Jurors in publick Courts, solemnly made and taken in the Presence of God and man, by a Bench of Justice absolved, or denying them to perform what they had enforced them to Swear? Must we by our Laws, under grievous Penalties, abjure the See of *ROME*? And our Magistrates tread its steps in assuming the like prerogative? And not only so, but commending their Idolatrous, Cruel, Tyrannical, and Inquisitory Practices, upon sober and religious People? As *John Howel* the Recorder, frequently did that Sessions.

What's the end these persons aim at, in their Indicature? Its too apparent, Not (*Salus Populi*) the Commonalties Good: What Religious Persuasion do they defend or stand for? In punishing Dissenters from the national Church: We know they commend the *Papists*, and spare the *Atheists*. Never was there any so wicked or curled Betrayers of Right, Liberty, Justice, or Religion in any Age, but they would pretend to be Patronisers of them: Yea, Its Recorded, That the Theeves and Vagabond *Jews* getting power into their hands (a Presage and Fore-runner of the sore and lamentable Calamnes that befel that people) chose themselves, a High-priest, and usurped power in *Jerusalem*, to give Laws and Oppress at pleasure, of whom *Josephus* thus writes, page 637. *D.* "But they used the Temple as a Castle, and defence "for themselves, against the people, and made the Sanctuary a "place for them to exercise Tyranny in.

Consider well, and weigh the Actions of *S. Starling*, *Londons* Mayor, *John Edwards*, and *John Smith*, its Sheriffs, the head and Chiefs sins of the peoples Oppressors, in enforcing their Officers, Sargeants, and Servants, to be Informers and Prosecuters against the Innocent, by their Proclamations making peaceable people Rioters, and thereby not only to forfeit their Rights and Liberties; but these their Adversaries assuming Authority to demand what part of their Estate they shall think meet: And judge if these practices run not paralel to those of *Albinus* President of *Judea*, which *Josephus* thus impartially relates, "Who was over all "as a Tyrant, and a Prince of Thieves; and he used the help of "his Guard to Robb the meaner sort ——— Nay, he was not asha-"med to proclaim it throughout the whole Country, Lawfully "for any one that would, to Robb and Steal, so that they would "bring him a part of their Booty. Fol. 623. *E. & F.*

And although he had (like these late Oppressors) power for his Law, and authority to enforce what he willed upon the people, yet the Divine Historian tearms *Albinus* but a Tyrant, and his Actions Theft and Robbery.

Thus are poor *Englands* quiet, peaceable, and religious Inhabitants torn in pieces by those Sons of *Belial*, their Lives, Liberties, and Estates made preys, to gratifie their Lusts, Avarice

bad Wills and Pleasures: And where do these Violences and Oppressions arise, but from the undervaluing and nullifying of our Good, Ancient, Wholsom and Fundamental Laws, our great Charter of Liberties, the Preserver of our Lives, Freedom and Property. *Votes Parl. 22 Decem. 1667.*

However, too many of the minds and spirits of our Countrymen are besotted, through that deluge of Vice and Debauchery, that has over-spread and covered the face of our Land; sure we are, that the right Noble and Vertuous will ever have a high esteem of those Laws, that were not only dear to our Ancestors, but famous throughout the World, for an equal Ballance of Justice, whereby every mans Right and Liberty might be Weighed.

Its observable what that *Roman* Senator, *C. S. Saturninus* (a Lover of Vertue, Liberty, and Wholsom Laws) declaim in the Senate, (saith he) "For to them that know what Vertue is, "it is no small Felicity, to live one Hour in Freedom of Mind, "and in a free Country, Governed by such Laws, which in "times past, have made our Common-Wealth to flourish—— "——For in regard of the present time, there is not any "thing that we ought most earnestly to effect, then to live Ver"tuously; For only Vertue is the thing that confirmeth men in "their Liberty———I know how great Mischiefs Tyranny "do ordinarily breed in a publique State; for they utterly ex"tinguish all Vertue, and deprive Freemen of that perfect "Magnanimity that may be in them, and teach both to flat"ter and to Fear; for that the Common Wealth is abandoned, "not to the Wisdom of the Laws, but to the fury of the intempe"rate Governours.

And Complaining of *Julius Cæsars* Violation of that course of Law whereby the State was polliced, (says he) "In Sub"verting the Laws to his good liking, and himself to his parti"cular desires, there is not any kind of misery and Mischief that "hath not overthrown our City.

Whence we may observe, and conclude that all these horrid Oppressions and Wickednesses, that have been in Ages past, acted upon, and offered to any People, State, or Common-Wealth, they have naturally flown from the want of Vertue, or from the debauched Practice of the Magistrates, governing and judging the people by Will and Power, and not by stablished Laws, which is the Case of these Prisoners, who yet lie in Durance at the Will of their cruel Adversaries, because, as one saith,

Sepultum est jus in Regno, prava Voluntas,
Vis & Violentia magis regnat quam Fuditium.

FINIS.